

ARGUMENTS AND SPEECHES  
OF  
WILLIAM MAXWELL EVARTS

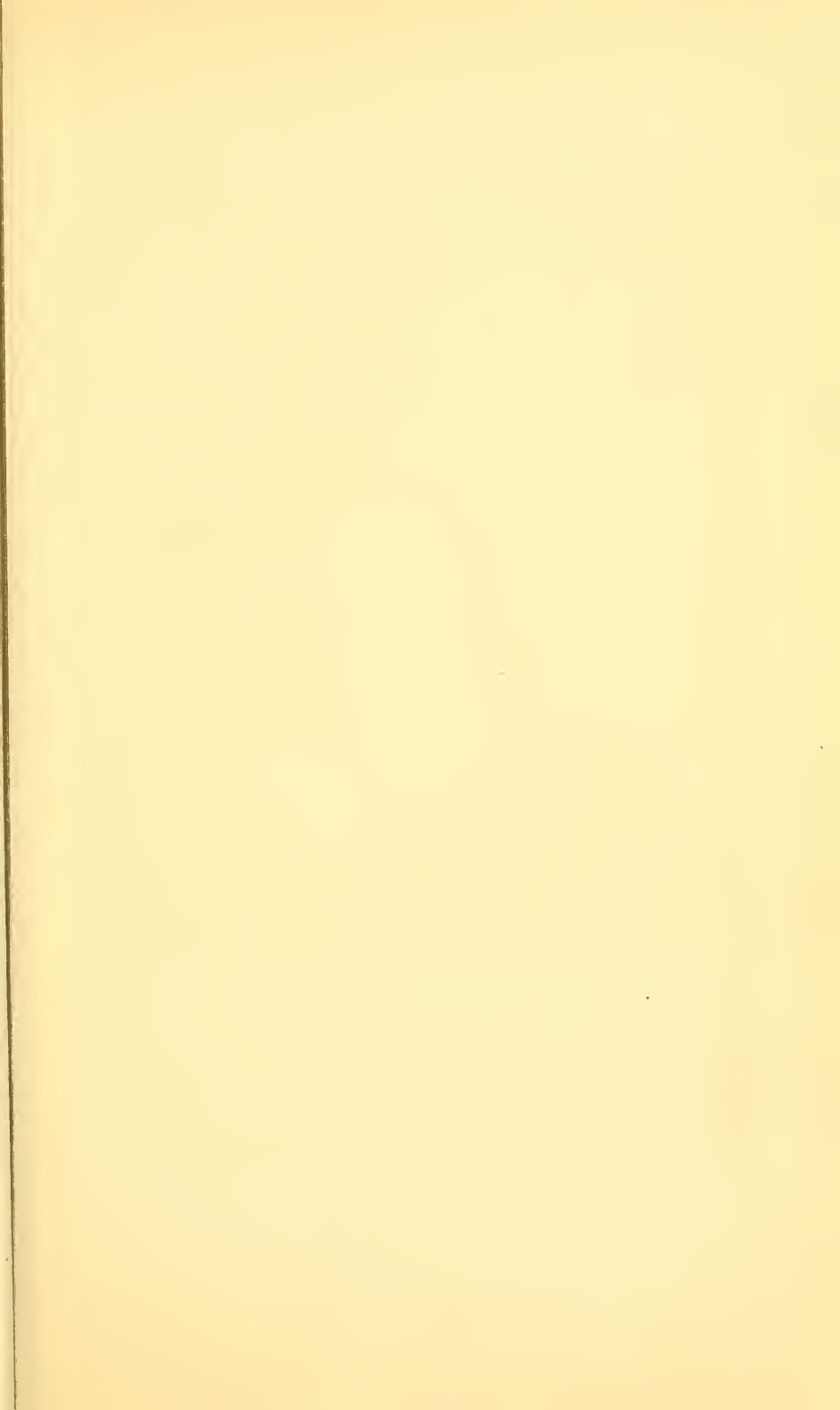


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**WILLIAM MAXWELL EVARTS**

*From a portrait by William Morris Hunt, painted in 1870.*





ARGUMENTS AND SPEECHES  
OF  
WILLIAM MAXWELL EVARTS

EDITED, WITH AN INTRODUCTION, BY HIS SON

SHERMAN EVARTS

*In Three Volumes*

VOL. II

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PROFESSIONAL ARGUMENTS



## IX

### ADDRESS TO THE JURY IN SUMMING UP FOR THE DEFENDANT IN THE CASE OF *THEO- DORÈ TILTON AGAINST HENRY WARD BEECHER*

#### NOTE

The Beecher Trial was the culmination of the most extraordinary and widely discussed scandal of the last century. The action was what is known in the law as an action for *crim. con.*, the plaintiff setting his damages at \$100,000. The defendant was the Rev. Henry Ward Beecher, the famous pastor of Plymouth Church in Brooklyn.

The plaintiff, Theodore Tilton, a younger man than Mr. Beecher by some twenty-two years, had been from early manhood, in some sense, a protégé of Mr. Beecher's and there had existed between the two men relations of mutual affection and regard. Mr. Tilton was a man of brilliant powers and had been a popular and successful public lecturer on ethical, moral and religious topics. He was also an author and journalist of considerable repute. As a young man, Mr. Tilton had been assistant editor, under Mr. Beecher, of "The Independent," an influential journal devoted primarily to religious subjects. He succeeded to its chief editorship, but in the latter part of 1870 was summarily dismissed by the proprietor, Mr. Henry C. Bowen, and at the same time his connection with the editorial staff of the "Brooklyn Union," a paper of which Mr. Bowen was also proprietor, was severed. This result, with its disastrous effect upon the fortunes of Mr. Tilton, was brought about very largely because of his attitude on social and religious questions that interested the public of that day and also by reason of stories affecting Mr. Tilton's private character that had been brought to Mr. Bowen's attention.

From this point Mr. Tilton's fortunes and reputation steadily declined and his connection with the public was largely maintained through the editorship of a paper known as "The Golden Age,"

established and carried on through the influence and financial aid of his friends.

In the succeeding years there was much scandalous gossip and whispered rumor in Brooklyn directed against Mr. Beecher, but not till the autumn of 1872 did the accusations against him assume any very definite shape or become a matter of public discussion. The scandal burst forth in November of that year through an article that appeared in a sensational sheet known as "Woodhull and Claflin's Weekly," published by Mrs. Victoria C. Woodhull and her sister, Miss Tennie C. Claflin. These women had established a brokerage office in Broad Street, New York, at the same time posing as social reformers or social revolutionists, dispensing all sorts of radical views subversive of established society; and it was in connection with their attacks upon the marriage relation in particular that they published this weekly paper. The article contained very definite and detailed charges of immorality against Mr. Beecher, and the evidence on the trial of this famous case tended very clearly to show the responsibility of Mr. Tilton for the substance of the statements made.

From that moment the scandal became common property and was discussed and expatiated upon by the press of the country. The parties involved in the scandal, and more particularly Mr. Tilton and his friends added fuel to the flame by public statements in the newspapers, and finally a committee of Plymouth Church took the matter up and made an investigation of the charges as then pressed by Mr. Tilton. The whole matter assumed the proportions of a great public question and of serious public discussion.

The situation as it existed during the years immediately preceding the trial was graphically described in the opening paragraphs of Mr. Evarts's summing up. After referring to the great anxieties and solitudes of the advocate when he comes to present his client's defence, Mr. Evarts continues: "If in a private cause, however momentous the interests, these sentiments and feelings may justly agitate the mind of the advocate, how much more oppressive are they when the matter in hand has to do with great public interests and strong public passions, when the client has become involved in all the eddies and currents of controversy between

men's opinions, prejudices, feelings and in all the forms that make up the connections and the sympathies of society and of life. Why, it has been true in this case from the time that the scandal first burst upon public attention—it has been true in this case that, so far from the individual case being considered upon its real facts, so far from the individual being accused on his real character, so far from the connected culprit, the lady, being judged of by that measure that we wish to meet, that we may be so judged ourselves, they have been made the personalities and the names upon which all sorts of public controversy, of public contumely, of public discords have turned. Questions of taste, of social ethics, of manners, of morals, of religious forms and of religious faith, as affecting communities, cities, forms of communion, particular churches, particular circles of society, all have been tossed about in endless controversy, in which these parties and the actual facts of their case have really formed but little part. Everybody has been trying everybody. Europe has been trying America. New York has been trying Brooklyn. The other cities and the rest of the country have been trying Brooklyn and New York, coupling them like *Herculaneum* and *Pompeii* and *Sodom* and *Gomorrhah*. All the scoffers and the infidels have been trying all the Christians. The ancient church, mother of all dissenting denominations—the *Romish Church*—has been trying Protestantism. The church of dignity, and coming nearest to an establishment among Protestant churches, has been trying all the forms of dissenters that have not a ritual. And then the *Presbyterians*—they have been trying all the more modern forms of dissenting sects; and then the *Methodists* and the *Baptists*, each in turn have been trying the *Congregationalists*, and then at last the *Congregationalists* have been trying *Plymouth Church*.”

The action was begun in the City Court of Brooklyn in August, 1874. It was called for trial January 5, 1875. By January 11, a jury was secured and the actual trial began. It proceeded without interruption, the Court sitting five days in the week, until July 2 following, when the jury, unable to agree, was discharged. The jury stood nine to three in favor of the defendant. As Mr. Evarts said, commenting on Mr. Tilton's attitude in the case:—"If there had been no question in this case affecting a great character, in



which there was enlisted the interest of every honest man and woman in Brooklyn, in the United States, in Christendom,—I mean Mr. Beecher—if the fact of his purity had not been the fundamental fact in this case, but the question had been, as it might have been, between Mr. Tilton and one of his neighbors of an equal importance in society, between neighboring farmers or merchants or lawyers, however reputable and however dear to them their credit was,—if a plaintiff, against such a defendant, had brought a suit of this kind—the jury would not have sat five months one month, one week, one day upon his case. \* \* \* The plaintiff would be laughed out of Court and he would not have had as uncomfortable a record for the public in that short disposition of the case as the five months' protraction of your patience and indulgence has made for him here."

Naturally, from the widespread public interest in the cause the court room was crowded during the entire trial by an audience, made up of the adherents of one side or the other and of those whom general curiosity had attracted to the scene. The trial was marked throughout by manifestations of feeling on the part of the audience which it was quite beyond the power of the Court wholly to restrain. As the last words fell from the lips of the orator in defence of Mr. Beecher, the court room burst into a great volume of applause that lasted fully a minute.

The Chief Justice of the Court, Hon. Joseph A. Neilson, presided at the trial. The plaintiff had secured as his leading counsel, William A. Beach, eminent in the profession as an able trial lawyer, with whom were associated William Fullerton, who was among the leaders at the criminal bar, and Roger A. Pryor who had then but recently come to practice his profession in New York. Messrs. Morris and Pearsall, a well known firm in Brooklyn, were the plaintiff's attorneys of record. Judge Morris of that firm also took an active part in the trial. Mr. Evarts led for Mr. Beecher, and with him were John K. Porter, Benjamin F. Tracy, John L. Hill, Austin Abbott and Thomas G. Shearman, of the firm of Shearman and Sterling, who appeared as attorneys of record for the defendant.

As one reads the record of this famous trial, contained in three large, closely printed volumes, one is impressed with the extremely



courteous bearing of the counsel towards their opponents and the Court in the conduct of the case, and the proceedings were frequently enlivened by the witty encounters of the lawyers, in which the wit was by no means confined to one side. One feature of Mr. Evarts's conduct of this extraordinary trial was the subject of remark at the time by the lawyers engaged, and by the Court, as well as by the public:—this was the apparent ease with which he bore the long and continuous mental and physical strain of the trial under the heavy responsibility that it involved. While at one time or another some one of his associates or opponents was absent, through indisposition of health, he remained throughout always at his post, ready and alert.

The theory of the defence, while insisting upon the defendant's absolute innocence of the charge, was that Mr. Beecher had been the victim of a cunning plot and conspiracy on the part of Mr. Tilton and his friends, in a spirit of hatred and revenge, to drive Mr. Beecher from his great position of influence into dishonor and ruin, and that the motive lay partially in the assumption that Mr. Beecher had been largely responsible for the utter downfall that Mr. Tilton had brought upon himself by his own conduct.

Aside from the able interlocutory debates on questions of evidence, the case presents no important points of law that might be of interest to the profession or the student, but its record will always remain as an extraordinary exhibition of human nature and character, of human motives and conduct. As stated in a subsequent note, the editor has found it necessary to omit a considerable portion of this address which occupied eight court days in its delivery. The lapse of time and the lack of present interest in the case itself do not seem to have impaired the contemporary estimate of Mr. Evarts's summing up as a great and masterly forensic effort. One sincere admirer of that day likens it to the "historic arguments which made illustrious the Roman and the British Bar."

## ADDRESS

FIRST DAY, MAY 27, 1875

May it please your Honor, and Gentlemen of the Jury: Whatever diversities may present themselves in the trial of a cause, as its texture and its color are woven to the completion of the picture, the solitudes of the advocate know no ebb, and they come to the flood when he is to present the last plea for the defendant, and is to surrender his representative capacity. These solitudes are not personal. No considerations of vanity or fame have anything to do with his anxieties. All exhibitory or ostentatious speech has always been foreign to forensic art. We deal with realities. We have to do with living men and women, and with real, personal deeds. It is this that disquiets the advocate when he comes to feel that the representation is to cease, and all his faults and his failures are to come as penalties upon the client, and he no longer can stand to interpose any shield against his own influences. It was this that made Cicero say—Cicero, easily at the head of all ancient, and easily transcending all modern, reputations in our profession—Cicero, after he had gained the credit of being the greatest lawyer among orators and the greatest orator among lawyers—Cicero, who had built up that credit which is now represented by his works on the shelves of every scholar, though he be not a lawyer, of every lawyer, though he be not a scholar—that led him to say, when he could not but confess good grounds for confidence in himself: “I, notwithstanding all this, declare, so may the gods be merciful to me, that I never think of the time when I shall have to rise and speak in defense of a client that I am not only disturbed in mind, but tremble in every limb of my body.”

Ah! then it is that the fate of a client, as affected by the

faults, the defects, the omissions of the advocate, rest indeed upon the mind of the latter. Certainly, gentlemen, there is everything in this cause, as through the long period of the trial it has been drawn out before you, that should make everyone feel, not in this personal sense, but in this solicitude for the client, what he would desire, and what he misses in himself. One would wish some of those fabulous powers by which poetic invention has sought to eke out the infirmities of our feeble nature. One would wish for a hundred eyes, to pry into every fold and crevice of this testimony, and draw forth aptly and in season every fact, when it was needed, and as it would be effectual. He would wish for a hundred hands, that now he could hold up the whole mass of it for its collective power upon your minds; and then that he might divide, distribute, discriminate it, so that at some finger's end there should always be each topic, each passage, that could shed light or carry conviction. He would wish more than these aids of instruments, that perceptive force which could discern the merit and the efficacy of the vastly diffused elements of the proof, and by unerring magnetism draw forth from all, missing no single needle from any haystack with which the field of the trial is strewn, when it was needed to scratch the face of any ugly falsehood or prick the pompous bubble of hypocrisy. He would wish that he had that power of reason that could crush the obdurate mass of evidence, separate the ore, and then, by an intellectual alchemy, purge it of all the dross, and lose not one pennyweight of the pure gold of truth, but seize that, and that alone, as sterling coin for your circulation. And most of all would he wish that moral power of distillation that could deal with the juices of this long fermentation, strip them of all discordant elements, reject all poisonous oils, all corrosive acids, all heavy heat of passion and of prejudice, and present to you the pure, invigorating wine of honest sympathy for human nature, of honest warmth for human justice. And then,

he would wish for that greatest gift, eloquence—eloquence which, overleaping even the short circuit between the voice and the ear, speaks out from heart to heart as face answereth to face, and, what a great thinker among mankind, Lord Bacon, has said is more than eloquence, discretion of speech, that no excitements, no perversions, no enlistments, no animosities should carry him beyond the duty to his client, to justice, to truth, to his opponents, and to you.

If in a private cause, however momentous the interests, these sentiments and feelings may justly agitate the mind of the advocate, how much more oppressive are they when the matter in hand has to do with great public interests and strong public passions, when the client has become involved in all the eddies and currents of controversy between men's opinions, prejudices, feelings, and in all the forms that make up the connections and the sympathies of society and of life. Why, it has been true in this case from the time that the scandal first burst upon public attention—it has been true in this case that so far from the individual case upon its real facts, so far from the individual accused on his real character, so far from the connected culprit, the lady, being judged of by that measure that we wish to meet, that we may be so judged ourselves, they have been made the personalities and the names upon which all sorts of public controversy, of public contumely, of public discords, have turned.

Questions of taste, of social ethics, of manners, of morals, of religious forms and of religious faith, as affecting communities, cities, forms of communion, particular churches, particular circles of society, all have been tossed about in endless controversy, in which these parties and the actual facts of their case have really formed but little part. Everybody has been trying everybody. Europe has been trying America. New York has been trying Brooklyn. The other cities and the rest of the country have been trying Brooklyn and New York, coupling them like Herculaneum and Pom-

pei and Sodom and Gomorrah. All the scoffers and the infidels have been trying all the Christians. The ancient Church, mother of all dissenting denominations—the Romish Church—has been trying Protestantism. The church of dignity, and coming nearest to an establishment among Protestant churches, has been trying all the forms of dissenters that have not a ritual. And then the Presbyterians,—they have been trying all the more modern forms of dissenting sects; and then the Methodists and the Baptists, each in turn, have been trying the Congregationalists; and then, at last, the Congregationalists have been trying Plymouth Church.

Well, we haven't any chance to be heard in this storm. If they had formulas and propositions that, on the part of Europe, were to condemn our vulgar, uncivilized institutions and society; and then if these different cities were to try it on the question of whether it happened in Brooklyn, and if it did, why that was enough; and then in the churches—if men of absolute and fixed traditional faith said, "Well, the moment people undertook to be independent and care more for practical morality, and practical charity, than for orthodoxy of doctrine, and vain human aspiration, this is the end of it all;" if these were to be the methods of accusation, or imputation, of discussion and of conclusion, why, Mr. Beecher and Mrs. Tilton, and the actual form and pressure of the charge, are all enveloped in the dust of these whirlwinds, and these forces determine the conclusions of men, and not the actual weight and character of any particular conduct or evidence.

Then, too, when you come to consider the defendant as placed in the common attitude of the civil justice of the country, at once there was an immense expansion of the public expectation as to what could be done, or should be done by such a man; how he could not safely rest upon the proposition that guilt must be proved, and that he



against whom it was not proved was discharged acquit and innocent from human justice; and the proposition was taken that unless he made affirmatively his innocence as clear as it would appear, if he were innocent, at the judgment day, the trial had failed of his purgation, and had left the people a right to doubt about him.

Ah! if your honor please, to make these exactions of inquisition, as if it were the last judgment, and to furnish us with none of the compelling processes, and none of the penetrating omniscience, and none of the all-loving charity which belongs to God, is indeed a burden that cannot be borne. All limitations of authority in regard to witnesses; all rules of law regulating testimony; of power to twist the consciences of the wicked till they spoke the truth; to inform the intelligence of the honest so that they should speak the truth with appropriateness, and with vigor, and with power; all these limitations of human institutions, limitations upon men, were all discarded in these irresponsible discussions, and these rash exactions and conclusions which the public and their organs felt themselves at liberty to exercise.

Now, take the point where the scandal became public, as a scandal, as a matter of imputation, as a matter of curious inspection, as a matter of wise deliberation, as a matter of unimpassioned but yet one-sided conclusion, and see how, by a reference to some of the general and yet well-recognized points of this controversy, our loving client, Mr. Beecher, has been exposed to judgments that have nothing to do with him or the facts of the case. Well, where a scandal is promulgated, then at once there is a vast class of the community that give it a ready and a free acceptance. *Et otiosa credit Neapolis, et omne vicinum oppidum.* The idle profligates of New York believed it, and of all this neighboring town. And so, in every quarter where the wicked classes make their meetings, and hold their gossips with a sneer and a smile, the scandal was accepted. Why, that a man should err with a

woman, that a weakness of the flesh should yield to a temptation of the flesh, these classes said they had known always and everywhere, and they were glad that their doctrines and opinions were being accepted among the more serious classes.

Others put it upon what they understood to be robustness of Mr. Beecher's frame. Well, now that is a ground to put it upon that is very difficult to deal with; for we cannot deny that he is a man, as he presents himself before you, as you have studied his face and seen his figure. And yet over and over again you have seen what professed to be rational examinations of this inquiry that are really made to depend, when put to the true analysis of what the argument means, on this question of physical strength and temperament. Why, to be sure, that overthrows human virtue, human civilization, education, religion, morality, faith in men and love for men, faith in God and love of God; it overthrows them all. Why not? Man is an animal. Man is an animal; and when you come to deal with the questions of natural propensities, you must treat him as an animal. In other words, gentlemen, this scandalous and wicked, and, when stated, ridiculous and monstrous proposition is made, that against an accusation of incontinence there is no defense in our state of society except the proof of impotency. How horrible! How wicked! And when pressed home to such careless disputants, how shocking to their own sense of the growth of society, of the beauty, the purity, the dignity of human nature! "Thou hast made man a little lower than the angels," is the doctrine of Christianity and of religion. "Thou hast made man undistinguishable from the brutes," is the proposition of these profligate accusers and condemners; not of a particular man, not of a particular woman, but of all the pretensions to virtue and all that makes us pride ourselves upon living at an age which has inherited the great civilization of all time, that has received the great gift of an

Incarnate God and the permanent possession of the institution of the Gospel.

Well, then, all sorts of volunteer disputants appear, attacking and defending; and for the defenses or excuses, if not for the attacks, all over the country, there was a sort of responsibility, carelessly thrown upon the case and the person of Mr. Beecher. The most extravagant of the apologies for Mr. Beecher's conduct was in a very well considered and very well expressed letter published in one of the western papers, said to have been from a lady, and doubtless it was so. Without inquiring particularly, or even caring to inquire, whether there was any truth in the charge, this apologist seemed to think that for a man who had done so much good, and who was still doing so much good, and was capable of doing more good than all the other preachers in the country, as she expressed it, that a little aberration of this kind, in the nature of a solace and a support for the immense drain on his moral nature—it was not to be considered improbable, and instead of being excused should be justified.

Well, now, I have never heard anything quite as strong in the way of partisanship as that, except in a curious anecdote of English political history. John Wilkes—Jack Wilkes, as you have all heard of him—the great liberty agitator of the time of George III, with his great wit, his great audacity, gave much trouble to the court and the ministry, and gained equal favor with the radicals and the opponents of the ministry. He was a man of profligate life, and, unluckily, he was a man of a very ugly countenance, and, among other things, of a very indisputable obliquity of vision. Well, parties ran high; all were for him or against him; and all imputation upon his conduct, his patriotism, his morality, or what not, were met by his friends boldly and confidently; and two ladies in high life, one of the Court party and one of the Liberty party, were discussing with the heat and candor which belong to women's



love of justice the respective merits and demerits of Wilkes, and when the champion of Wilkes had pressed her adversary to the wall on every question of politics, of taste, of morals, of patriotism, and of public danger, the opponent of Wilkes turns upon her and says: "Well, you must admit that he squints." "Yes," says the disputant, "but no more than a man should."

Now, all these follies and frivolities through several years of twilight, of darkness, of suspicions, and of doubts, have been clustered around this controversy, and it was only when we came into your presence, and with the authority of the law, and with your candor and attention and patience and sense of duty, that we ever began to get at what this real matter was, and to judge of its probability or its improbability, its proof or its refutation, according to live persons with real characters, and a crime defined and measured, that we ever had any real dealing with it, in any sense that a rational man could consider dealing with it.

But then see how men have reasoned about the conduct of this defendant while this imputation in the civil courts was pending. How many men have been shocked that Mr. Beecher should continue to preach and worship God when Mr. Tilton had called him an adulterer, when Mr. Tilton had spoken of him as a perjurer. They actually undertook to shorten the divine commission under which he acted, which was to preach the Gospel to every creature, they adding "until men shall revile you and persecute you and evil entreat you." Is that found in the apostolic commission? Is that the character of even an humble clergyman like honest Mr. Gay from Indiana, who, rather than sit quiet under the lewd teachings of this moral lecturer (turning to Mr. Tilton), resisted him to his face, and has fulfilled his duty at \$400 a year as an humble preacher ever since, losing his salary of \$1,600 because he believed in the religion that he professed, and in the duty of men of his profession, at

least, to meet and grapple with spiritual wickedness in high places. And then others say, "What a shocking thing it is that Mrs. Beecher should attend this scandalous trial, where she will be exposed to hearing so much evil said of one whom she loves, even though he does not deserve her love!" And actually so vulgar and vile are pharisaical judgments that they undertake to shorten the marriage vows as well as the apostolic commission, and when a woman has sworn at the altar to "love, cherish, and to obey, for better for worse, for richer for poorer, in sickness and in health, till death us do part," these people said an alternative limitation was interposed—"or process shall be served upon you to come into the city court of Brooklyn."

Now, I believe that all these follies and scurrilities have wholly faded out of the public mind, of the public criticism, of the public conscience, if conscience has anything to do with them. I believe that when this great preacher comes to give his account, at the last judgment, of the many talents that have been confided to him, the hard Judge named in the parable will find no fault in him—that he did not bury his talents in a napkin, even during the six months of the Beecher trial. I know that the young hearts and consciences, and old, obdurate sinful natures that in those six months have been searched for and found, give more joy in heaven than over all these good men that criticize, who have needed never to experience repentance.

Now, gentlemen, the first important period of publicity grew out of the publication that was made by the Woodhull threat and the Woodhull newspaper. But, as by a law of nature tolerably true even in morals, if we know enough to watch and wait—as by a law of nature the flood never can rise higher than the fountain—that scandal did not very much disturb the judgments or the opinions of what constitute society, what constitute the manly and womanly character of our communities. And the next promulga-

tion that gave rise to anything like a popular or a considerable acceptance of responsibility in its source was the promulgation in the form of the Bacon letter, as it is called, made by Mr. Tilton himself.

From that time to this, there being a responsible accuser, in indefinite form to be sure, but yet in a manner that would justify one standing in so responsible a position as Mr. Beecher to desire and require investigation and ascertainment, led promptly to an immediate inquiry, in the only manner which an honest submission to the principles of religious faith and of maintenance of the solemn tie of church connections made possible. It was, that an accusation connecting the pastor of the church with one of its members in improper relations should be examined by intelligent, well-balanced minds, strong, definite, honest character, and well-accredited and indisputable public faith. And a committee was appointed, having, I will venture to say, in your judgment, in all men's judgments, as much of those valuable traits of mind, character, and of public repute as the City of Brooklyn and the City of New York could furnish. An inquiry was held; and those who knew most of the matter were examined and cross-examined, and their respective stories were compared, weighed, and a result arrived at. Mr. Tilton maintained his accusation without stint in respect to his own imputation, had it explored, had it reduced or conformed by his own cross-examination. Mrs. Tilton, obeying a duty, accommodated, as well as truth would permit, to the divided sentiments and the divided obligations of a wife and a woman, owing duties to herself, her children, and to others that had to do with matters concerning which she was to speak, her children, her pastor, gave an account exonerating absolutely Mr. Beecher from all share in improper sexual relations of any degree, vindicating herself, saving the fame of her children, and of her husband even, against this reproach, and at the same time declining or

avoiding, passing over, omitting any hostile exposures of her husband's conduct, or any hostile exposures of his arts and schemes and plans in the matter of this accusation.

Mr. Beecher was examined and cross-examined, and all these papers have been before the community, before the counsel for this plaintiff, before the court, so far as their applicability under the rules of evidence made them important; and the unanimous judgment of these six men after this examination was a disposition of the matter that should have satisfied all honest imputations, all candid, all sincere doubts. But before that was ended, the suit, discussed and prearranged really before it began, was set at work, and from that time onward we might have expected that the public judgment and the public appeal to the forms of judicial investigation and its guarantees of completeness and accuracy should have been submitted to. Instead of that the plaintiff published a great argument, thrown out without an adversary,—and his defender and faithful champion, two others—all aimed at the wide public, full of threatenings and slaughter, full of argument hoped to be considered unanswerable, because there was no issue, and no tribunal before which they could be answered—these brave opponents of a world in arms, like Wouter Van Twiller's ordnance in his old Dutch fort, frowning defiance on an absent foe.

Now, gentlemen, at last we come to a direct submission of the cause to the ordinary tribunals of justice. The plaintiff selects his form of action, makes his choice of the court where he will bring it, provides himself with counsel; and then the defendant is thus authoritatively brought under the protection, as it has been throughout, to him, of judicial methods, judicial impartiality, and all the guarantees that our institutions furnish for the accused in the form of responsibility, have been made the limit and the scene of the controversy that both these parties now must submit to the result of.

No doubt the plaintiff enjoys a very considerable advantage in the preliminary arrangement for the maintenance of a legal contestation upon his part, and no doubt this plaintiff has shown great wisdom and has enjoyed great good fortune in the professional aid that he has called around him.

An experienced, indefatigable, able, and intrepid attorney and managing counsel, Mr. Morris, familiar with all the surroundings of this judicial scene; an accomplished and eloquent advocate whom we are glad to welcome to his share of honor and of fortune in the competitions of our bar—I mean General Pryor; and then these eminent lawyers who lead for him, Mr. Beach and Mr. Fullerton, easily at the head of the criminal practice of the State, foremost in all the employments and honors of the profession, accustomed to act together, lacking no resource of vigorous and bold, open attack, no resort to the lawful strategies of arrangement and surprise, lacking nothing that can make “the vigor and success of the war come up to the sounding phrase of the manifesto,” if it be possible.

Mr. Beecher, taking his choice as it was left to him from what was not secured to his opponent, was obliged to content himself with the faithful, the earnest, the loving espousal of his cause coming from our brother Shearman, a friend who sticketh closer than a brother, if we can measure the closeness with which brothers stick by Joseph Richards’s adherence to his sister; your foremost perhaps, certainly one of the foremost, lawyers of Brooklyn, General Tracy, known in public office, in private life, in political and social relations, and, in professional conduct, experience, and reputation, quite the peer of any lawyer in Brooklyn—and the lawyers in Brooklyn are the peers of lawyers anywhere; and my learned brother Porter and myself, coming with the disfavor that belongs to foreigners, crossing the Behring’s Straits that separate these two continents, but sharing that misfortune with our learned brothers Beach and Fullerton.



And here we are now as we have been for five months. We began when the weather was as cold and snowy as in the stormy night which introduces the friendship of Moulton and Beecher, and this trial has lasted until the sweltering heats almost come up to those of that June morning when Mrs. Moulton smothered the defendant's grief and despair in an afghan. Samson Afghanistes, after that incident, Mr. Beecher must be known as, to distinguish him from Samson Agonistes, the plaintiff, who after laying his locks in the lap of the Delilah Woodhull, and having his eyes put out by the indignant frown of his countrymen and countrywomen, found there was no rôle for him but that of the blind Samson that should pull down the temple of his household, the temple of his society, the temple of his religion, upon his head, and those of his wife and children.

Now, who are the accused? The defendant, Henry Ward Beecher, and the partner of his guilt, if he be guilty, Mrs. Elizabeth R. Tilton. For there is this, unluckily for Mr. Tilton, about the crime of adultery, that it takes two to commit it. As the lady said in the ball-room,—where the light French phrases please the ear of society not over-virtuous, that frowns at prayer-meetings and considers them dangerous—as the lady said to the beau who had learned more phrases than facts about human life, and who asked her what was meant by *faux pas*, a false step—she said she didn't know exactly, but was quite sure it was not a *pas seul*, a step that could be taken alone.

Now, that is the misfortune of Tilton. There was nothing else Mr. Beecher could be accused of very well, and some woman must be found to be made the partner in the guilt, in the accusation, in the blasting prosecution, in the infamy, in the wretchedness, of his prosecution; and if it was a matter of indifference what woman was to be taken, why should not a man give his own wife the preference? True, there were these drawbacks about his wife; he knew

her and she knew him. He knew that she was as pure as gold, that she was as chaste as snow, that she was as pious as a saint, as loving to her husband as if she worshiped the ground on which he trod, even when that ground was the filthy mire in which she was fain to eat of the husks on which the swine did feed. He knew that she adored her children; that she loved every friend of his, because he or she was his friend; that she loved all who needed aid and charity, and sympathy, and were poor, and came from the highways and hedges, because they were human and she was Christian. All that he knew. He knows it now; he has sworn it here—that she was, has been, and is as lovely a woman as human nature and Divine grace can produce, and shall be hereafter before the throne of God forever and forever. That he knew; that he swore. But he had also sworn that he would strike Mr. Beecher to the heart, for interfering with his business interests, and taking part in his domestic discords when brought to his notice—that he would pursue him to the grave; and there was no means but this; and I suppose he found his justification in poor Hamlet's bitter speech to poor Ophelia: "And if thou marry I will give thee this plague for thy dowry: be thou as chaste as ice, as pure as snow, thou shall not escape calumny."

But Hamlet did not outrage human nature by saying that she should not escape malicious calumny from her own husband that knew her goodness.

Now, Mr. Beecher, stripping off all impertinent traits for this inquiry, observing those proprieties which decline unnecessarily to offer estimates, however just, of great abilities, great conduct, great life, great fame—let us look at him, as the other inculpated party, as he stood before the accusation, as his character, his conduct, his repute, were known by his neighbors, his fellow-citizens, the men, the women, the children of Brooklyn.

In the first place, gentlemen, I shall receive your universal

and ready accord to the proposition that Mr. Beecher in this community stood as a city set on a hill that cannot be hid, and for twenty-five years had not removed the bounds of his habitation, and had no opportunity of false and sudden imposition upon strange communities who took rumor or public report only for their estimate of him. Whatever he was to the Christian world, whatever he was to Europe and the United States, whatever he was to the Christian faith, whatever he was to the moral schemes of our European and American society, whatever he was to social and political interests, all know and all understand that he was, to the people of Brooklyn, a man about whom they had had as many, as good, as sure, as prolonged tests of what he was as it is possible in human affairs, unless one has the penetration of the Divine inspection. All these tests Mr. Beecher had been exposed to for the long period of his residence here.

Ah! gentlemen, you will find as we go on in this cause, and as you take it up upon its facts and compare it with known principles of human nature and human conduct, you will find, at every stage of this business, that the attack is not personal but against our society, against our morality, against our religion. The attack is not that there are wolves in sheep's clothing; that vicious men dissemble, and that they hide themselves under the cloak of sanctity to prowl on the society that they thus impose upon; that is not the proposition; that is not the issue that the Pantarch and the priestess and the prophet of the new faith make. It is that the favored, approved, tried, best results of this social scheme of ours, which includes marriage, and of this religious faith of ours which adopts Christianity, is false to the core; that the apostolic men and the saintly women are delivered over to the lower indulgences; and that that being proved, the scheme itself is discredited and ready to be dissolved. It is that the good women, who remain good afterwards, are good while they are committing



these faults; that the men that have every flower and fruit of Christian love and Christian duty and Christian faith, that are only greatest in our society because they are its faithful, denying, unflinching servants of it in all things, that they are wicked (if this be wicked), and that the only escape from that conclusion is that the institutions of marriage and religion as now constituted are themselves the responsible, guilty causes of these alleged criminalities.

But, if Mr. Beecher was thus universally and absolutely known in these his relations to your community, he was also known in his person as a familiar and recognized object of common knowledge—more, I will not say, than any man in this city; but more than any man almost, by possibility, in any community comes to be, among those who surround him. Mr. Beecher could never take a secret walk, or a secret drive, or go in privacy to any photographic saloon or picture gallery, to any place of assemblage, in any thoroughfare, where, whether he knew anybody or not, there were not eyes enough to see or ears enough to hear whatever he or she could notice in his demeanor or his speech. Now, it is of this man that this culpability with this woman, such as I have described here, is alleged to occur here in the very scene of their residence, and of this public observation to which I have called your attention. I shall hereafter compare the circumstances, the duration of the siege to this fortress and of its possession, to see whether that comports any more with these circumstances and situation of these parties than the wicked character of the criminality does with their moral and religious repute and conduct.

Now, who are the pursuers? These are the hunted parties, Who are the pursuers? Mr. Tilton, Mr. Moulton and Mrs. Moulton. The law gives the action only to the husband. and Mr. Tilton is the plaintiff; but the combination, the consultation, the plot, the scheme, the purpose, is but the final stage of what has been the common ground of action of

Moulton and Tilton through the years of this transaction; and Mrs. Moulton, in some sort cognizant of the operations as they were going on, comes finally to choose the party, whether she shall be counted with the pursued, or shall take her stand with the pursuers, and she chooses the latter. A great thing, a thing that no man can look at without pity, that no man can estimate without charity; that no man can find in his heart to carry to the account of personal fault or even weakness more than is necessary when the common law and the common experience of society has carried the blame to the husband, and union with the husband, as covering misfortune and the responsibility of the action. A misfortune, a fate, which injunction of the Christian religion attempted to secure women from when they were instructed not to be yoked with unbelievers. "For what part hath he that believeth with him that hath no belief."

But their sides are drawn; there the issue is made; and now we are brought to consider what is the form and dimension of the guilt imputed. It is seduction, the seduction of a married woman during the stage of life when she gives children to her husband. Is there any greater crime than that? Leave out the circumstances, if you please, of the relation of the clergyman to his communicants; leave out the difference of age; leave out all the circumstances that give heinousness to the crime from the paramour's relation to his own family and his own wife, and take it as the act of loose calculators upon the virtue of women, and put it even against such a man as the crime that he has committed, is there a greater crime? Is there a crime that is visited with greater severity in the judgments of all moral, of all thoughtful, of all kind men, whether they make pretensions to piety or religion or not?

Ah! gentlemen, this is the first clear discrimination that you are to make between the accusation here and a general imputation of sexual indulgence or sexual temptation which

has this or that degree of heinousness under its circumstances, and receives this or that degree of condemnation according to the purity and the clear-sightedness of the critics. But this, the seduction of a virtuous, wise, discreet, child-bearing mother in a happy and virtuous society, is a crime that at least needs to be proved before people will admit that it is probable. Ah! if your honor please, *dolus latet in generalibus*, it is when you have the abstract reasoning about imaginary, undefined, unmeasured crime that you can judge at random whether a man would commit it or not. But that is not what you are to do. You are to judge of this crime, and are to solve in your minds when you come to test the proofs, its compatibility with any pretensions of character, of generosity, of charity, of pity, of love in the breast that can compass the ruin of womankind.

Now, the plaintiff leaves no obscurity here; he has made his charge. I will show you his reasons for making it as he did. He thought he could commend it to probability by the shape in which he worded it, for words are to him everything. He has what is called an exchequer of words; he banks upon it, and never redeems any of them, and his stock as a banker is inexhaustible. Or, to take another phrase from the same master of language and of human nature, he is always able to deliver a fine volley of words; but they are words, and I don't know, according to the proverb, how many words it takes to fill a bushel basket. Words which, if he can make them dovetail together in sentences and syntax, and hover long enough for him to close his lips and leave the stand, he thinks will carry conviction; but when I come to take up the narrative of his accusation, if I don't show you that it never came out of a woman's mouth to him, nor out of man's mouth to Mr. Beecher, I will lose the case. I didn't, by a cross-examination, seek to disturb one word of his own narrative, which fills two columns of a newspaper. I knew when I heard it all that the devil of lies had played the same trick

with him that he always plays with his devotees. Their falsehoods bring them into the accusation of the Divine intelligence, and the means it, by its mercy, has provided for the moral government of the world; and then deliver over the victims of the great temptation to the author of that temptation, for the punishment which Divine justice provides for such cases.

Well, then, not only is this a seduction, but it is a seduction of many years meditation, prosecution, defeat, and final triumph over a reluctant, weeping, unsympathizing, unresponding partner of guilt. Well, is that a probable occupation of the time and mind and thoughts of the busiest man in Brooklyn, the man whose energies are ever taxed in the open day and before the eyes of all men to the uttermost, so that the wonder is how one short life and one single energy can pour out these fountains of spiritual life and gladness that adorn this city with their freshness and flow over the whole land? What becomes of all the maxims of human nature by which we prevent evil by occupying with good? What becomes of Dr. Watts's familiar proposition that "Satan finds some mischief still for idle hands to do?" What becomes of the universal experience of society that these offenses which do come and must come, however great the woe denounced upon him by whom they come, that these offenses are bred out of idleness and luxury and opportunity, and allure men? Here again you have a feature of the accusation that flies right in the face of all the propositions by which the idle and dissolute are always classed together, by which the parent saves his son and protects his daughter by keeping them out of the company of the idle, lest they, too, may become dissolute. Why, if your honor please, gentlemen of the jury, the intellectual traits that have framed this charge are as contemptible as the moral, odious traits that have prompted it.

Well, seduction, in its duration of four years, at last pro-

duces adultery, and that continues for sixteen months. Well, how great a crime that is! Within the sixteen months a child is born. The maternal instinct of grief at the death of the infant, and the maternal instinct of joy at a man-child begotten during the period of adultery, begin and end this domestic transaction. And what greater criminality is there that can be framed for those, even if the odious features of premeditated and prolonged seduction were excluded; even if you found the parties involved by sudden temptation and by mutual attraction, and by overpowering propensities of evil; it is wicked, wicked as it can be, wicked in heart, wicked in soul, wicked in hate to God, to society, to human nature, wicked in everything. But all along there attend heavy shadows, deep stains of guilt, that give even new horror to this terrible accusation, even if kept within the sexual limits of fault. Impiety on both sides, blasphemy, sacrilege, false witness, perjury—the whole decalogue is rent asunder by a woman that is most lovely and most pure throughout it all; and the man who has been through it all and is now the greatest preacher of the Gospel of Love, the greatest defender of the foundations of society, the greatest cheerer and confirmer of the charities and beauties of the family relation, the readiest advocate of everything that is good, that is pure and of good report; a man that, when you ransack his life by a cross-examination that entitled them to prove against him corruptions of any kind from Indianapolis down, goes from the stand unquestioned by audacious cross-examiners, who didn't hesitate to ask old Oliver Johnson whether he didn't pick out a strumpet in Canal Street and take her to a bawdy-house in Mercer Street.

Now, you begin to see how, when a man begins by self-worship as Tilton did—and which I will show you is the source of all his woes—when he finds no greater than himself, nothing that he can bow to with reverence and devotion—when he finds that, he comes to the conclusion, almost nec-



essarily, and it overmasters his conduct and his speech, that he can impose his law of human action, his law of human responsibility, his law of human duty, his tests of intellectual fitness upon the rest of the world. And he then illustrates that short and pithy characterization of the quality of folly and of its extreme duration: "The fool hath said in his heart there is no God." There is no moral government in this world that looks out for men. There is nothing that keeps society together but constables and jails and handcuffs. There is nothing that keeps virtue in women except imprisonment in harems, and eunuchs for the matron's care and duennas for the maiden's. This is the government of the world that the doctrines and propositions of this man's case must reduce you to; or else you must find that while faith in human nature, and while humble dependence upon Divine protection remain, as they now are, the basis and the glory of our refined, free, yet virtuous and strict society—so long as that relation of man to man, and man to God continues—the features of this case, moral, intellectual, and, as I shall show you hereafter, even circumstantial, charge an impossible crime against impossible commission.

#### RECESS OF THE COURT

The incredibility of so flagrant and heinous an imputation upon two excellent people, as I am justified in pronouncing both these parties, irrespective of the imputation under consideration, was sought to be parried by this plaintiff, by certain qualifying elements in their crime which approved the act to the consciences of each. Well, there is another blow, not at these individuals but at the schemes of morality, of religion, of the theory of conscience and of duty. Make it out once that good people can commit crimes and be good in doing it, and in their consciences approving it, and in the retrospect seeing no fault in it, and you have proved the first

darling proposition of the wicked, that the distinction between evil and good is mere matter of pretension and authority. Ah! gentlemen, that is the final stage of dissolute immorality in a man, in a city, in a community. When you have reached that stage you have exposed yourself to that final woe denounced in the Scriptures, "Woe to him that calls evil good, and good evil." Why woe to him? Why, he insults the very majesty of heaven, he strikes at the very authority of the moral governor of the world. Good men may do wicked things; bad men may do good things; but woe to him that draws out of those instances and experiences of human nature the final insult to the Deity, that there is no distinction between good and evil. How can you renovate society that adopts that proposition? How can you redeem an individual soul that adopts that proposition?

Now, they say that this lady never did anything wrong that she thought wrong at the time; never did anything—Elizabeth never did—that her conscience did not approve. She was always pure-minded; she hadn't a carnal inclination in her frame; she didn't think she had violated her marriage vows, and never discovered that she had committed an injury to her husband until she read a novel, in which there was no violation of marriage vow, and no adultery, and no carnal sin of any kind, but an undue entanglement of the affections for a priest, and an interference with the supreme devotion to her husband in the management by the wife of the household. Now, that is her notion of guilt laid down to her by her husband; her character now, after the act, as well as during the act, and before the act; and she is a woman of strong intellect, an admirable, and a truthful critic, accustomed to the best intellectual society; not frivolous and weak, not valuing men for their earthly distinctions, but for their high moral and intellectual characters; condescending to those of low estate; saving women at the Bethel by the hundreds from debauchery and vice; bringing her

sheaves full of them to the Judgment Seat, that she has saved. Her husband did her the honor to think that she was still engaged in that Christian service at the moment he was giving his evidence.

And then Mr. Beecher, he felt that if he had fallen—if he had fallen at all, as Mr. Moulton puts it in a single passage I shall call your attention to critically—he thanked God, at least, that he had not sinned through lust; it was nothing but love—beautiful, chaste, elevating, purifying, solacing love; and if there had been any sexual intercourse between them, it was merely circumstantial, as it were—a mere emphasized touch of the hand and kiss of the lips—making their benevolence and good still more penetrating to the soul, more grateful to God. And then it was such a solace and a food to his mind, as Mr. Tilton reports it, and such a strength to him in his labors for the conversion of sinners! Well, he was an intellectual man. Tilton had at one time thought he was a man of great intellect, greater even than his own, but he had outlived that; but still his strength was in his great moral qualities. There he was unsurpassed and unsurpassable; there was his hold upon his worshippers; that is what led them from the true admiration of the greater intellect of Mr. Tilton. These great and warm sympathies with mankind, this magnanimity, this generosity, this boyish candor, and warmth and recklessness,—this was what made Mr. Beecher greater than Greeley, and Sumner, and Tilton. Well, now, you see, you add one thing more to make this adultery, that was without lust on either side, and that was this union between a saintly woman and an apostolic man, without the least earthly sentiment, which has sometimes been supposed to infect marriages a little. All you needed was to give the sanction of religion and prayer to it, make it, so to speak, a sacramental adultery, in the presence of God and the holy angels, introduced by prayer and terminated by prayer.



Ah! gentlemen, look at the folly of the weaving of this brain, that could expect his charge of adultery to be believed, expect his charge of adultery to cease to be incredible, only by the adultery being made immaculate,—cease to be a violation of conscience only by its being a glorious exhibition of the power of human love; and I shall show you hereafter that they could only make the connection and intercourse possible by being allowed to dispense with all proof that it ever occurred, or was legally demonstrable and by throwing down all the rules of evidence, that deny hospitality to charges of this nature.

Adultery, gentlemen, is a thing that touches the institution of marriage, and no consenting testimony of confessions ever can break the bond. Children, and children's children are interested, that their fortunes and their future shall not be contaminated and despoiled by the vice in respect of truthfulness of any of their ancestors. There must be a proof as against them, binding on them, by people who saw the conduct, the action, the communion, the opportunity, the security, the subsequent evidence of the occurrence; and then a court, and then a jury find that a fact has occurred to which the law imputes the consequences of the dissolution of the marriage bond; and though it sheds a tear over the innocent that are to suffer, it is a part of that moral government of the world intended to secure obedience, to compel regard for children, for those we love, the law that if the father eats sour grapes the children's teeth shall be set on edge. And didn't this woman know that? And didn't this preacher know that?

Now, what is an occurrence that is against all human experience, and all natural laws, whether physical, or mental, or moral? Why, it is a miracle; that is what it is. That is the definition of a miracle. So this is a miraculous adultery, the like of which is described in none of the histories, nor the symptoms of it given in any of the philosophies. Nobody can

guard against this kind of adultery coming into their families, because it comes with the purest and best, who remain pure and best all the while it is happening and after it is over.

Well, miracles need a good deal of testimony. That is agreed, I think, from the beginning. Some writers thought that no amount of testimony could prove a miracle, because it accorded with human experience that man would lie, and did not accord with human experience that miracles would happen. Still that is dangerous ground. All agree though, that for belief in a miracle, you must have good testimony, enough of it, from pure lips, honest hearts, intelligent observation; and when men have laid down their lives on that testimony, been torn by wild beasts, been roasted at the fires of martyrdom, pierced with arrows, slain in defense of their testimony and the truth, it is a miracle that men should go through the act, unless they testified to truth, and we believe their evidence.

Now, *Ridentem discere verum quid vetat?* We may sometimes illustrate truth with amusement. Not very long ago *Punch* had a very pleasant colloquy and cartoon, giving a conversation between a ritualistic curate of the English Church and a Sunday-school boy, on the subject of miracles. "My boy," says the clergyman, "what is a miracle?" and the boy answered correctly, the first time, that he didn't know. "Well, my lad, if you should wake up in the middle of the night and see the sun shining, what would you say that was?" Says the boy, "I should say it was the moon." "Well, but supposing a man should tell you that it was the sun, what would you say then?" Says the boy, "I should say he lied." Well, with dignity and emotion, the curate proceeds: "Suppose I, that never tell a lie, should say to you that it was the sun, what should you say then?" "I should say that you were drunk." Well, now, that shows how hard it is to prove a miracle.

Well, now, here we have a blazing sun of adultery in the

serene, religious light of the most saintly characters, testified to by witnesses; and if you were asked, under these moral conditions of miracles, what criticism would be made upon the statement that this blazing sun of adultery was flaming out of the very heavens of religious purity, what would you say? Why, you would say that it was the moon, that nothing inconsistent with chastity and purity could display itself out of those heavens. Ah! but if Mr. Tilton comes along and says: "But if *I*, Sir Marmaduke,\* the husband of this pious wife, the friend of this apostolic clergyman—if I say to you that it is the blazing sun of adultery, what would you say then?" I think you would say that he lied. And if Mr. Moulton, Sir Philip Sidney, that never told a lie, if he should say: "But if I, on the honor of Sir Philip Sidney and my own combined, *I* say it is a blazing sun of adultery"—you would say that he was drunk. But *Punch's* catechism has given out, and we have another witness: "I, the wife of Sir Philip Sidney, I, the communicant of Henry Ward Beecher the sisterly friend of Mrs. Tilton, I say it is the blazing sun of adultery out of these pure heavens." What would you say to that? Well, politeness, even in a boy, would make him hesitate, but I think he would have to say (for he would not give in to the miracle)—he would say, "Well, madam, I think you must have been sunstruck and don't know the moon from the sun."

Now, gentlemen, there is no greater contrariety in the propositions of the natural miracle and the sense of the boy thus illustrated by a humorous story, than the contrariety between the firmament of the moral authority of this world, fixed by the same Divine hand that set the courses of the

\* In the course of the trial there was read in evidence a poem written and published by Mr. Tilton, entitled "Sir Marmaduke's Musings." Mr. Tilton testified on Cross-examination that some of the sentiments expressed in these verses had reference to his own experience in life. In answer to a question put to him on Cross-examination Mr. Tilton had said, "I think that Francis D. Moulton is the successor of Sir Philip Sidney in all that is honorable, manly and magnificent in friendship."

stars and divided the day and the night between the sun and the moon, and the accusation here made by this plaintiff. It is discriminated by as firm lines as this natural arrangement of the skies—just as impossible of derangement. What is demanded from our belief is just as much a final and fatal disorder as this transposition of the sun and the moon in their natural reigns, as fixed by the Author of this material frame on which we live. Nay more, He who made these moral divisions meant that they should be more permanent than the physical frame, for He said: “The heavens and the earth shall pass away, but not one jot or tittle of my law shall fail.” Now, that is a respectable authority, and the date of the continuance of that law, and of responsibility under it, is so remote that it is not worth our while to run our heads against it.

Now, gentlemen, whenever you establish the proposition that these breaches of external morality that threaten the very fabric of society, the central point, the purity of the family, can occur without preliminary moral degradation and preparation—without being accompanied by any inflammation of the low desires and the triumph of the flesh over the spirit—can be practiced with the maintenance of all the active benevolences and the exhibition of all the beautiful virtues of life, you have struck a blow, not at Mr. Beecher, not at Mrs. Tilton, but at your own wives and your own daughters. Why do you rear them in the distinction between the wise and the foolish virgins, if the wise virgins, with their lamps trimmed and burning, are to be left in the outer darkness, and the wedding feast closed against them? Why do you look at the growing beauty of face and form, and feel safe? Because you observe and trust an equal flowering of the immortal spirit, and find that her mother’s virtue shows itself in every disposition of the beautiful maiden; that she loves charity, seeks the lowly, teaches the ignorant, saves the abandoned, loves her father, loves her

mother, loves her brothers, loves her sisters, has her hands full through days of constant and painful labors appropriate to her sex and condition, sleeps at night upon a pillow prepared by prayer, and watched over by Him to whom the prayer was addressed. What are all these things to you if it is demonstrated by the verdict in this trial that there is no connection between the moral nature and the lewd, wicked low, base prostitution of the body? And what do you think of your wives, if this is so, as you have watched them through fifteen years of marriage and of duty and found them to be (as you knew them to be when you clasped hands with them at the altar) pure, noble, intelligent, discreet, wise virgins as you espoused them, and have found that they loved their husbands to idolatry, loved their children with a devotion for which there is no epithet and no comparison? Who ever heard an illustration of a mother's love? Nobody can give an equivalent for that. How often have other forms of human affection been dignified by comparing them in power and intensity to a mother's love! But you find nothing to compare a mother's love to; it is a prepossession that fills the heart, satisfies the mind, shows to the widest experience that there is nothing can be placed above it to illustrate it.

If with all this, and with your daily observation of the course of life, the coming in and the going out of a woman, the correspondence day by day during your absences, you find out, some 4th of July morning, that a course of temptation, of solicitation, of coarse and vulgar contact with the body, has prepared the way to a final adultery that has continued for sixteen months, would you not lose your faith in religion, your faith in women, your faith in society, your faith in human nature? Why, all the while it may be going on in all our families, and nobody knows anything about it. What, shall we then discard all this, shall we believe that these sins come only by power against which no morality can guard, that there is no necessary connection between character and



conduct; that these sins do not come from within, but that with all this purity they may arise? Character and fate, the opinion of society all crush you and your family. What will you believe? These idle and frivolous suggestions made by the oaths of Mr. Tilton and of Mr. Moulton, or will you look to higher authority?

Now, there was once a great authority in this world whose brief sojourn in the flesh changed the nature of the world and laid the foundations of that religion which we all profess, and has redeemed man as an individual, raising him to glory ever since, and has redeemed society from the vicious influences with which heathenism corrupted it, and raised it to its present elevation. It was said of Him that he needed not, as we all need, as you need—that He needed not that man should testify of man, for He knew what was in man. Now, what does he say on this subject? “For from within, out of the heart of man proceed evil thoughts, adulteries, fornications, murders, thefts, covetousness, wickedness, deceit, lasciviousness, an evil eye, blasphemy, pride, foolishness; all these come from within and defile a man.” And that is the basis on which you rest the Christian education which is to preserve the chastity of your beautiful daughter against all allurements and temptations, and you watch to see whether in her conduct you find any beginning of uncertain steps outside the way in which she should go, and if you do not, but find that all her steps are firm in the paths of the Gospel, you have no fears.

Now, it did not use to be so with women or with men. Are we to discard this life-giving, purifying, elevating sentiment on which our society has rested so well and so long, which is to be extended by the benevolent labors of our missionaries and the generous contributions of all Christians of all creeds, for the help of a sinking world? Are we to abandon these and go back to the old system of physical security? I should think not. I would like to see the men that would



look their wives and daughters in the face and tell them they must go back to the duennas for the maidens and to the harem for the married women. And, as we are not princes, and have no system in our equal society by which the fair and the beautiful are crowded into the possession of the princes and nobles of the world, whenever we undertake to lose our faith in religion and virtue, in the equality and the purity of women, we shall have to adopt some of those associated forms of protection by which combined efforts may furnish adequate security. We shall have to have a Wife Deposit Company, where we can leave our wives during the day, and we shall have to have some patent contrivance of paramour-proof alarms by which we can be called to the rescue when the insidious undermining of this external virtue (for there is nothing left in the world but external virtue) begins.

Now, gentlemen, this being the character of the crime, and this being the disposition, conduct in general and repute of the accused parties, let us see what the law requires to meet its exactions in reference to such a suit as this.

And first, what is the nature of the suit? It is what is called, for shortness, a *crim. con.* action, by which an injured husband is allowed to seek a verdict of the jury, and as a consequent upon it, pecuniary damages for the invasion of his family, the sacrifice of the purity of his wife, and the destruction of the happiness of his household. The action is an anomaly offensive to our civilization, and grew up only from a peculiar condition of the English law in respect to divorce. Adhering to the strictness of the Romish Church, which made marriage a sacrament, and allowed it never to be terminated except by the highest religious dispensation, the English Church, the English nation, maintained the indissolubility of the marriage relation for any cause except adultery, the highest power in the country being the judge of that; in other words, an act of Parliament being necessary for the dissolu-

tion, as the fiat of the Pope had been, while he remained the spiritual head of all Europe.

Now, Parliament would grant this dissolution only for adultery, and it would require the proof of that adultery, not to be made in affidavits and depositions, confessions and concurrence of wish and agreement, and failing to have it wrought but by public trial through the authentic and trustworthy mode of determining questions of fact by the verdict of a jury in a hostile, not collusive, suit, in which the husband should have the means of drawing an adverse party, the paramour, into the contestation. Then the rules of law, if your honor please, in maintenance of this great policy of society that there should be an open proof in fact, and not by confessions of the act, upon which the marriage tie could be dissolved and the family dispersed, maintained the proposition that confessions alone were not adequate for the maintenance of the issue; that the validity, that the security, that the purity of the marriage relation, and its maintenance in good credit, as an example to the rest, should not permit of any destruction of it except by proof of the fact.

Now, the nature of the act being secret, and the more elevated and civilized the society the more secret, proof of the actual, final guilty contact, as of the body of the crime, was not required, but proof of the body of the crime was required, proof of conduct, proof of disposition, proof of adulterous purposes, proof of entangled affections of sexual purpose, proof of open or discovered behavior of some kind that showed the surrender of lustful desire and the prosecution of the purpose of its indulgence, proof of the opportunity, by companionship, drawing them away from virtuous and honest haunts and scenes into relations which themselves carried imputation of unlawful purpose, and of such length as gave opportunity, and under such circumstances of supposed security as rendered it justly a conclusion that the adulterous purposes that had been manifested by previous external conduct and the

withdrawal from the paths of innocent and open companionship into this or that situation foreign to the natural and moral relations—following that, I say, opportunity of personal contact, with security, or opinion of security, were adequate substitutes, or adequate methods of proof of the body of the crime. It is a mistake to say that the body of the crime is not required to be proved, in the same sense that the body of the crime is required to be proved in all matters of judicial condemnation. The distinction is that from the peculiar nature of the guilty act, the facts and circumstances of external proof shall be of that consistency and force and undoubtful conclusion as carry the secret act as the consequence of what has been openly seen and proved.

Now, these are the requirements of our law. These facts thus proved, accompanying or supporting confessions—that is, confessions of the party implicated in the suit (for confessions of one party do not affect or conclude in the least another) may make out an adequate ground for a verdict, provided it is made manifest to the concurrent judgment of all the jurymen that the things proved are not reasonably compatible with any other conclusion than that of guilt. Society, law, abhors this conclusion, and refrains from it except when, beyond all reasonable doubt, and in the varying minds of twelve independent, honest men no other result can be reached. More than in any other case the law fears here to strike in the dark. It has made one great concession, that the mere fact need not be proved, if you prove the approaches to the act by ocular witnesses. Beyond that concession it will not go; more than in all other issues of fact, it is striking the absent and the innocent; it is injuring society by aspersing and discouraging the institution of marriage; it is unsettling the faith of man in woman, and of woman in man; of parents in children, and of children in parents; and the law will not strike the blow in the dark. More than in any other case is the feeling of our humane law predominant;

that it is better that ten cases of guilt should pass unpunished than that one of innocence should be condemned. In other cases the conviction of the innocent touches mainly him or her, but in this case it strikes the absent, and the infants, and wounds society in its tenderest point.

Now, in this country this action has never had any respectability about it. Why? Because the basis that made it respectable in England was wanting: that is, in England it was a necessary step in the vindication of the husband's right to have a divorce from the guilty wife. The method of their law had provided this means of an open and adverse trial, but in our country, in our State, divorce has always been obtainable, not on any lighter cause than adultery, but upon an issue framed in an equity court, in which the husband and the wife themselves were parties, and the trial was between them, the man and the woman, and no *crim. con.* was necessary. And honest men never had a desire to promulgate their shame, their wives' shame, their children's blight. It was only in the lower orders of society, where there was always a suspicion of speculation and money seeking, that this action found any hold in this American society. And it has attracted the notice of political, moral, and religious thinkers in England why it was that these were felt to be most discreditable actions, no matter what their result or their justification in fact, and were wholly discarded in America, and they found out the reason, and they now have opened their courts of probate and divorce, equivalent to our equity jurisdiction, to try the direct issue between husband and wife for a divorce. And what have they done? They have said to these parties, "If you don't want a divorce you can't have any action for *crim. con.*; that is abolished. If you do want a divorce you may also pursue the guilty paramour by joining him in the suit, and if you establish your right to a divorce you may have, as a consequence, a just judgment against him in the way of punitive damages, but the money shall be

secured to the wife as long as she remains penitent and chaste.” Now, that, that is the treatment of the question that belongs to an intelligent, moral community; and I look, as a consequence of this suit, so rare in our experience, to see our Legislature purify our law and our courts in the same way.

Now, look you, a husband, although he has a guilty wife, cannot get a divorce from her either in England or here, if he is also a guilty husband, and he cannot pursue the paramour in England for debauching his wife unless he can get a divorce from the wife; and therefore a guilty husband does not find any encouragement for complaining that his wife has done an injury to him. Again, the law of divorce has always been pure. It has said, and insisted upon it, “We will allow no speculation on this subject at all, not an instant of it. If you become possessed of knowledge of your wife’s guilt, then show your respect for the purity of marriage, show your respect for yourself and your own virtue, show your vindication of the institution of marriage by resorting openly to the law for relief; but if, from pity, or from love, or from lust, you keep possession of the wife, one kiss after your knowledge closes your complaint. Condonation, by which a husband advised of the injury to his marriage-bed continues to cohabit with his wife, ends that business, and, *it is supposed*, keeps that secret.”

So you see, gentlemen, that there was not much basis for an action of divorce on the part of this plaintiff against Mrs. Tilton on any view of the facts of her conduct. He heard, it is said, a very long and minute narrative, turned over in the bed and kissed his wife; she became pregnant, and he lived with her four years. Now, gentlemen, nobody ever brought a narrative of that kind into a court of justice since the world began until now, never—I mean among civilized and cultivated people.

Something has been said about the epithets that have been applied to the parties and their coadjutors in this prosecu-



tion. Well, now, epithets spring from a generalization of facts, and never can be made until there has been a somewhat frequent or repetitious occurrence of the facts, in order to get a generalization out of them. There is not an epithet for this conduct whatever, for there has never been any other instance of it. Never! Never!

But aside from that, gentlemen, I should not think of bringing epithets to Brooklyn from New York, for a good deal of trouble, I think, has come from these extravagant epithets that the Brooklyn people use. They are very strong, and I think really the best test for the public safety that can be applied to our bridge between the two cities, whenever it is completed, will be to send over a preliminary train loaded with Brooklyn epithets. If the bridge can stand that, it will bear any burden. But seriously, conduct like that of this plaintiff upon his own showing (and no man can complain of being judged out of his own mouth) is not in need of any characterization. As Junius said once, with the pith that characterized him, such a character as this plaintiff's can escape censure only when it escapes observation. Now, it may not be pleasant; men do not like—always like—to lie in the bed that they have made for themselves, and they sometimes, most unseasonably and at great inconvenience to others, try to find a softer bed. But alas! in the search that this plaintiff may make to get out of this uneasy bed in which he lies, he has not the sympathizing follower with a pillow behind him that he had on those other occasions.\*

Now, gentlemen, if there had been no question in this case affecting a great character, in which there was enlisted the interest of every honest man and woman in Brooklyn, in the United States, in Christendom—I mean Mr. Beecher—if the fact of his purity had not been the fundamental fact in

\* Reference is here made to an incident in Mr. Tilton's house testified to by one of the household. The witness described one night when Mr. Tilton, followed by Mrs. Tilton, carrying a pillow, occupied in succession the several bedrooms in the house.



this case, but the question had been, as it might have been, between Mr. Tilton and one of his neighbors of an equal importance in society, between neighboring farmers, or merchants, or lawyers, however reputable and dear to them their credit was, if a plaintiff, against such a defendant, had brought a suit of this kind, the jury would not have sat five months, one month, one week, one day, upon his case. They would have said: "Well, if you could be so cool and quiet, so generous and forgiving, so amicable in intercourse with the adulterer, and receive so many aids and favors from him, and above all if you could live with your wife four years, we do not see any good reasons why we should trouble ourselves much about your misfortunes; you have been tolerably patient under them, and we guess in the long run it will be just as well for you and Elizabeth and the children that you should go on as you have begun, to the end." The plaintiff would be laughed out of court, and he would not have had as uncomfortable a record for the public in that short disposition of the case as the five months' protraction of your patience and of your indulgence has made for him here. Now, our learned friends understood this perfectly, and the odiousness of tacking a money verdict on to this action of this husband against this defendant, in respect to this disturbance of his peace, if it were all believed, was so apparent that they early disdained that. Some more noble passion than the acquisition of gain after this long patience was necessary, and my learned friends have found it in that very mild and creditable Christian virtue, revenge. This is their language—not for money, but revenge.

Well I never knew a jury that would like to be made an instrument of revenge. If they were to heal an honest man's injury, they would do it; but to help him to a revengeful assault upon another is not creditable. We pardon even the savageness of an enemy that, under provocation, takes vengeance in his own hands; but we do not pardon much

men who lend themselves as instruments to the vengeance of injured parties—not much. If a man shoots an enemy for a great injury, sometimes he escapes condemnation when strictness of law would take his life; but I think that if he hires another man to murder his enemy, the hired assassin is not considered an institution of society whose neck is to be saved from the gallows. So here, if vengeance, if injury, if destruction is the whole motive and purpose of this suit, you will not lend yourselves to it. And you will understand that this is an issue in which the question is whether Mr. Beecher, who stood for this whole country in the height and extremity of our perils and disasters against all England, and stood alone, and faced the frowns and jeers and “cat-calls” and “chaff” of great crowds of English gentlemen of the better classes, and faced them down in the name of the United States, who stood alone in England, and aroused, encouraged, developed, and amassed a power in our favor that no single mind or voice ever did since the world began—whether he is of that base, low, coarse, lewd fibre of soul and grossness of body that will enable this aristocracy of England to return the triumph they have had to submit to by saying, “You sent us the noblest, strongest, most courageous, most adequate man, and subdued us, but you have discovered that his courage was not of the soul of purity from love, from faith, from duty, but the mere effrontery of a voluptuary and an adulterer.”

Whether you are to say by your verdict of this man, who, ever since this trial has been progressing, has sat in your presence, of whom every stranger, humble or famous, that has visited the court-room during the trial has desired the acquaintance, the grasp of his hand, the recognition of his autograph, the knowledge of his person as a man, that not only they but you and all men should exclude him from companionship—for, I repeat, however lightly, however carelessly, however grossly people may talk about different forms

of incontinence and irregularity, nobody can qualify, nobody can tolerate a premeditated and persistent seduction of a married woman, and a continuous defilement of the marriage bed.

Ah! gentlemen, we must look this crime in its face. Why, there is not a sailor in Wapping, with a strumpet on either knee, badgered and beaten in the debauches of long voyages and frequent ports, but that, if a comrade should venture to suggest to him that he had seduced the daughter of an old shipmate, or the wife of a young comrade, he would bury his sheath-knife in the heart of his accuser. There has never been a coarse and vulgar debauchee voluptuary, that would flaunt his wealth and his vices in the face of our citizens here or in New York, and ride the four-in-hand of his new riches packed with courtesans, but who, if one of his boon companions should accuse him of seducing the companion of his daughter, the wife of his friend who had been trusted to his care—but who would send a bullet through the heart of his accuser. No, there are no coarse and vulgar voluptuaries, however lightly they may deal with incontinence, and however much they feel at liberty to poach on the manors that are not confided to their care, that either in practice or accusation will tolerate any such charge as this that you are asked to find by your verdict against Mr. Beecher. And your verdict for six cents finds it as much as if it was for \$100,000. This is not a case in which, as in some of these libel suits, they don't want to hold that any editor has kept within the bounds of politeness, and they don't want to show that the plaintiff's character was worth nothing. No, no; the issue is a vital one; your verdict is for the plaintiff or for the defendant. It passes upon this issue. There is not any other crime with which he is charged. There are no qualifying circumstances about it. If he is not guilty of all that I have described to you, he is not guilty of anything. That is the plaintiff's own figuring of the dimensions, the incidents, the traits of the crime.

We may consider ourselves prepared now to look at the question of circumstantial evidence, which may be very briefly disposed of. Now, what is circumstantial evidence? It is the evidence of direct witnesses to certain facts, which are thus directly proved, and from which, as definitely and accurately ascertained, you infer, within legitimate principles of reasoning, and by test of common sense, that what is alleged as the necessary conclusion from them is such necessary conclusion. I refer, if your Honor please, to an authority in our Court of Appeals: the case of the *People vs. Bennett* (N. Y. R., vol. 49, p. 144). The principles of circumstantial evidence—

In determining a question of fact from circumstantial evidence, there are two general rules to be observed: (1) The hypothesis of delinquency or guilt should flow naturally from the facts proved, and be consistent with them all. (2) The evidence must be such as to exclude to a moral certainty every hypothesis but that of his guilt of the offense imputed to him; or, in other words, the facts proved must all be consistent with, and point to his guilt not only, but they must be inconsistent with his innocence.

Accordingly, in reference to a case of this kind, where under circumstances of lewd intercourse, parties at a tavern, much more at a brothel, are found to be shut up in the same room, locked or otherwise secured; and the preliminaries have been shown of engaged affections, of lewd desires, adulterous purpose; why, there is circumstantial evidence which justifies a conclusion that in this security, and these circumstances of seclusion, the act of adultery may have occurred, must have occurred. All these things are to be guarded. The cases are very careful about even such circumstances. But all agree, as indeed common sense agrees, that when there is no circumstantial evidence by extraneous witnesses, of ear or eye, of such relations, either tending to or presuming the act which makes the guilt, or afterwards which confirms the character of the supposed act by subsequent



lewdness and attempts to commit the act—where no evidence of that kind is present, that is the end of circumstantial evidence.

Now, gentlemen, the plaintiff has not failed to present proofs that should carry some conclusion of guilt from any want of research. He didn't hesitate to put the power of the law upon Joseph Richards to make him come here and regret that he could not give you any valuable information. He did not hesitate, in his searching, when he brought from the wards of a pauper hospital a lying, drunken woman to say that she heard Mr. Beecher say to Elizabeth Tilton: "How do you feel?" and she replied: "Dear father," or "father, dear, so, so." Well, I don't know—I should think "so, so," at best, was an indifferent sort of feeling as compatible with a variety of things besides adultery. They don't reject trivial testimony, because they brought Brasher to testify that, as he was going fishing along one of the public streets, between 7 and 8 o'clock in the morning, when the sun was shining bright, he saw—would you believe it?—in open day, as the approximate act of adultery, Mr. Beecher standing on the doorsteps, having pulled the bell, and waiting for somebody to come to him.

Now, this matter of Brasher—who was a well-known gentleman, whose whole demeanor on the stand before you is a very good illustration of the perseverance, intrepidity, and indefatigableness of our friend, Judge Morris, in searching for evidence. Now, Mr. Brasher was a man who was well known to be very fond of fishing, and so fond of fishing, that when the tide served, no matter what hour of night it was, he was very likely to go a-fishing, and so he sometimes went at 2 o'clock in the morning, 3 o'clock in the morning, 4 o'clock in the morning. Now, there goes around a story in Brooklyn that Mr. Brasher saw Mr. Beecher, either in coming out of or going in at Mrs. Tilton's house, when he was going fishing. Well,

now, there is something—Beecher going there at 2 o'clock in the morning, coming away at 2 o'clock in the morning—still more extraordinary. Either way about the same thing. Brasher is summoned as a witness here, with an immense flourish. He didn't know what he was to prove; he never saw what he had to do with it; but he had seen Mr. Beecher at that doorstep when he was going fishing, but the difficulty is, if the tide served, he went fishing at all hours. He would as lieve go fishing at 8 o'clock as at 2; I think he would rather, and the only morning on which he had seen Mr. Beecher in any vicinity to this doorstep was the morning when the tide served at 8 o'clock, and not at 2 o'clock, when he was going fishing. Now, you, of course, saw the predicament of our learned friend, if I may call him so, when this capsheaf of circumstantial evidence, approximate act of unseasonable hour, of midnight prowling, scaling the walls that inclosed this beauty, and Brasher saying that at 8 o'clock he saw him standing there, that he remained there still while Brasher passed by, and showed conclusively that he was not coming away, and was waiting for the bell to be answered. Well, if he had been coming away it would not have been much; and what is more, there was not any evidence that Mrs. Tilton was in the house, or that Mr. Tilton was not in the house, or what Mr. Beecher went for, or anything else. The trouble was that the tide didn't serve for their evidence that day, and if the tide had served, why then the time of Mr. Beecher's going and the tide for the fishing would not have concurred, and time and tide wait for no man.

Now, the value of Mr. Richards's evidence—is it anything? The service of all circumstantial evidence, when produced by a witness, is to produce upon you the impression that would have been produced if you had seen the thing he speaks of. Now, there are two ways to find out what impression that would have upon you. One is the statement



of what the thing was that he saw, and, second, the impression that it made upon him when he saw it, and as he saw it. Well, he makes the most unlucky prelude, for the great circumstantial evidence on which this case, so far as proof of the act is to turn, is that he begins by apologizing to the court, and the jury as part of the court, before he would tell what he saw, that he regrets to say that unless he is suffered first to tell what he heard from other people about other matters, what he saw will prove to be of no consequence. Well, that is a very strange thing. I never heard of any witness—witnesses ought to come free from bias. What under heaven have they to do with what the impression of their testimony was or should be. They are called to state what they did see. The law doesn't allow anybody to state what they heard, and the poor man says, "Well, now, I am here, and I suppose, therefore, I am here for something, and really I shall make a fool of myself for coming here to say nothing unless I am allowed to state the circumstances that made me think there might be something in it." Well, we will dispense with that. Now, that is the first test, out of his own mouth, of what impression and weight and power there was in evidence in what he saw, and that is that there was not any. I don't think you need to worry much about what he saw, when he tells you there is nothing in it to begin with. Well, then, he goes on and tells it, and I don't know exactly the phrase, but he saw Mr. Beecher as he suddenly opened the parlor door, where Mrs. Tilton and Mr. Beecher were conversing—Richards knows nothing of it, except, perhaps, he had been told they were down there; he saw his sister withdrawing from what I think is called proximity to Mr. Beecher—moving away from him, and that she colored a little. Well, I don't think that that comes up to the rule that it must be an act that not only points to adulterous connection, but is inconsistent with anything else. It does not strike me so. How did it

strike Richards? He went in and kissed his sister, and saluted her, and shook hands with Mr. Beecher, and talked with him, and then went off about his business!

Now, in either way that it was evidence of an adultery that had taken place, or an adultery that was going on towards its consummation then and there, you will very easily see that, whatever had happened or did happen, it didn't make much of an impression on Richards, for he shook hands with the man and saluted his sister, and then went about his business, and shut the door or left it open—I don't know that he says which he did—and never thought it worth while to mention the circumstance to his sister, his only sister—her only brother, and their mother a widow.

Well, gentlemen, as I said about the attitude of the plaintiff in this case, there is no generalization of such conduct of Richards as enables me to apply an adjective to it. It never happened before. I don't think that, after his example, it will ever happen again.

I read from the case of *Freeman vs. Freeman*, in the 31st of Wisconsin, page 246, where the rules of all these matters of circumstantial evidence are laid down. Speaking of circumstantial evidence, the Court says:

All the circumstances are fairly and fully explained and shown to have been incident to some other object or design, and not to have been brought about for the purpose or with a view of perpetrating the offense with which the plaintiff is charged (which was adultery). And in this connection the Court cannot forbear to remark that the character of a minister of the Gospel whose reputation in all respects, except so far as it may have become involved by the unfortunate matter in controversy, appears to be fair, goes a great way to explain the facts, if indeed any explanation of them can be thought to be necessary. Nor can the Court refrain from the observation that the good character which the plaintiff appears generally to have borne, both before and since the time the offense is alleged to have been committed, is a most significant circumstance in her favor. If found guilty, the Court would be required to be-

lieve that from a life of purity and fidelity she turned suddenly to one of depravity and vice, and then as suddenly again returned to her former virtuous ways. Such a circumstance is highly improbable, and seldom or never occurs. There is not a scintilla of proof of prior misconduct or conjugal infidelity, and her subsequent behavior appears to have been innocent and not the subject of the slightest suspicion. It was suggested by Lord Stowell in *Williams vs. Williams*, as possibly "a less laudable motive" for instituting the proceeding that it might have been for the purpose of "trying the experiment of how little proof will be accepted as sufficient" to sustain the charge of adultery. A similar remark might, and with greater propriety perhaps, be ventured here, that the bringing forward of this charge, more than seven years after the occurrence is alleged to have taken place, and during all which time the husband seems to have had no thought of the infidelity of the wife, is to try the experiment of how little proof will be accepted as sufficient to raise a suspicion of her infidelity.

I have trespassed already on your honor's indulgence.

#### SECOND DAY, MAY 28, 1875

May it please your Honor and Gentlemen of the Jury: I was asking your attention to what the law requires as an entirely indispensable element of producing that legal certainty without which no judgment is allowed to be pronounced by the verdict of a jury, on questions of this criminality and of these large relations to the interests of society and extensive influence upon the happiness of others; and I had asked your assent to the proposition that this case was utterly bare of all those facts of conduct, as seen and observed, which led to the conviction that there had grown up in the hearts and affections of these people those vicious purposes which lead to wicked acts; none of that evidence which shows the external circumstances of misconduct or deviation from proprieties; none even of that addiction to one another's private society, which is marked as having some secret and wicked purpose; and there are none of the

occasions proved in any sense in which such a purpose may have been indulged or gratified, or from which any conclusion to that effect can be drawn.

Now, I have to consider some general relations of Mr. Beecher and Mrs. Tilton, which are in undisputed proof, which form quite as much a part of the case of the defendant, and of our theory of the association between them, its motives, its character, its traits, its action, as they possibly can do, in regard to the plaintiff's view. This was a habit of such social intimacy as belongs to a relation of a clergyman and a parishioner, though a married woman, provided there are the external indications which lead to that intimacy, and provided you find in the character of the parties, in their moral and intellectual nature, as separated from the subject in dispute, the attractions on the one side and the other, that at once account for and justify such degree of intimacy.

Now, I call your attention in the first place, on this general question of amount and form and frequency of association, to the fact that it proceeds almost entirely from the defendant's own testimony. The number of visits during the many years of confessed intimacy and constant regard, is represented as coming perhaps to once in from three to six weeks; every one of these visits in the ordinary hours of day, day in the sense of forenoon, for us who dine as we usually do, at 6 o'clock, every one of them. There is not a witness, a servant, an inmate of the family, Mr. Tilton himself, there is not one witness who pretends there was a visit in the evening, in the sense of a private call; some social entertainment, some invitations, some set occasions, amounting, I think, to nothing very definite, and certainly very few in number, that were fixed for an evening, of course, if Mr. Beecher was present, showed his presence in the evening; but then it was in a crowd, it was in a company, it was in the parlors.

Now, in regard to any visits of Mrs. Tilton to Mr. Beech-

er's house, there is no evidence at all that any such instance occurred. Mr. Beecher says, whether or no Mrs. Tilton was at the house on the 10th of October, he doesn't know; and my learned friend doesn't ask him whether he saw her. She might have been at his house without his seeing her. They don't press any further in any of these inquiries. We show by him that he has no recollection of seeing her there, or of any occurrence of any kind which should note it in his memory, or produce to your knowledge any such fact; a fact that would have been wholly unimportant in itself, except as giving external evidence that would support the possibility of guilty conduct, if proof other and additional were given; for to say that the visit of a married lady of the parish, in the daytime, at the house of her clergyman, is a suspicious act, would shock not only the sense of decency, but the sense of fairness, and intellectually the common sense of every man.

Now, what beyond these visits, that ran through these years, occurring, as Mr. Beecher states them—and he is the only witness to them, and if he spoke falsely he could be contradicted by servants—if the view that he seeks to present to you, that he only strolled around there in the forenoons as a part of the solace and the recreation of a walk, and spent there say up to half an hour or so, from five minutes up to half an hour, in a call of regard, of affection, of intimacy, if that could be contradicted it would be. We are not to suppose that this plaintiff and his household, consisting of five servants, five children, and grown inmates, besides himself and his wife, is so unwatched, unremembered, unprotected in the observation of all who saw as that, if this general proposition of Mr. Beecher that his visits in point of time, in point of direction, in point of circumstance, were altogether and wholly of the character that I have thus given to them—you are not to suppose that this plaintiff is not able to contradict. Whether he is



able to contradict or not, absence of contradiction does not affect the purpose and result of the contradiction. What is uncontradicted, whether it be because it is absolutely uncontradictable or because misfortune has prevented its contradiction is, in a court of justice, the whole proof proved on the point.

Now, beyond this, what are the seductive arts, and what the corrupting influences that this visitor used? Why, there seems to have been what in the end came to a somewhat bulky collection of octavos, from the Bampton Lectures on the Divinity of Christ to the religious novel of which Mr. Beecher was the author. Well, when octavos are presented, and when the title page contains the inscription of the giver, even if the nature of the gift is of the suspicious character of the Bampton Lectures on the Divinity of Christ, still the element of secrecy, of amulet, of love charm, seems to be wanting on account of the bulk and the publicity of the transaction. Then there were some flowers—flowers sent to the chamber of a woman in confinement, flowers sent to the parlor of a lady living in her own house, flowers the sight of which gladdened the eyes of everybody within the house, and whose perfume betrayed their presence to every comer. Now, when a man has a garden and a farm, and when, as Mr. Beecher says, he was in the habit of strewing these flowers thick through the pathways of his parishioners, in their domestic life, I do not think that you will find much evidence of corrupt, of adulterous purpose in the mere fact that these flowers, once, twice, three times perhaps, made the subject of evidence, and in the chaste and beautiful and open form in which the testimony has disclosed them, will affect your minds with circumstantial evidence tending, as the law books say, to adultery, and incompatible with anything else.

Now, gentlemen, I call your attention to the affirmative proof of the absolute want of fact in this intercourse, on



which to raise suspicions and inferences, from what is an affirmative fact, that there were constant observers, that there were watchful observers, that there were jealous observers, that there were hostile and malignant observers, that watched these persons—the wife and the clergyman—during these years. You will remember a little item of proof in which Mr. Judson gave evidence, that at a lunch at Delmonico's Mr. Tilton introduced subjects of gossip or suspicion about this, that, and the other person; for the general subject and the general indulgence of words and speech on such subjects does not seem to have been foreign to Mr. Tilton's disposition; and Mr. Judson says to him: "Well, there is one thing certain, at least, Mr. Beecher has not been involved or suspected of any irregularities towards women"; and Mr. Tilton says: "I have lost my faith in man." Well, that is a pleasant form of meeting an imputation upon a friend—this was in 1865—a pastor, a visitor at his family, a man that for years he had been telling that a little woman at his house loved him dearly; and Mr. Judson pressing it again, Mr. Tilton still replies: "I have lost my faith in man," and for a third time this solemn, hypocritical "I dare not made to wait upon I would," is repeated by this stalwart man. Well, Mr. Judson, an intimate friend of Mr. Tilton, also a friend or acquaintance at least, of Mr. Beecher, and a believer in him—he doesn't like these cowardly threats of malice and envy, and instead of allowing the subject to breed the mischief it was intended to breed, he brings it to the light at once, and has it smothered forever.

A very wise man has said: "Suspicious that the mind of itself gathers are but buzzes, but suspicions that are artificially nourished and put into men's heads by the tales and whisperings of others have stings." He had read the Proverbs, too (in his youth), and he knew—and he lived up to it—"Where there is no wood the fire goeth out; and where there is no tale-bearer there is an end of strife." And he

took care that these fires should not lack fuel, and that these strifes should never miss a tale-bearer. But Mr. Judson goes at once to Mr. Beecher—goes to Mr. Beecher and tells him what Tilton has said, and Mr. Beecher seeks Mr. Tilton and calls him to an account, and Mr. Tilton denies it, abhors it, and does two things—one to Mr. Beecher—he writes him a letter that has been read to you, and one to Judson; finding him again, he says, “I thought you were my friend”; “I am your friend, but I am also a friend of Mr. Beecher.” “Well,” Tilton repeats, “I thought you were my friend.” What was there in the knowledge of Judson that entitled this tale-bearer and strife-maker to think that Judson, because he favored him with his acquaintance, and, if you please, with his good feeling, would become a willing participant in what in every right thinking mind, in every honest heart, is condemned as the vilest and basest employment to which any man, any one, man or woman, can stoop?

When the assassin faces his enemy or at least runs the risk of the resistance of weapon by weapon and force by force, or braves discovery and the opportunities of proof, and, so, exposure to punishment, it is still the basest form of enmity that is known—I mean of that deadly enmity that seeks destruction of the life. But that assassination by the slow poison of calumny, secretly infused into every vein of the society in which the calumniated character moves and is known, that is a baser and viler form of assassination. It has every degree of cowardice, every amount of malice, every wickedness of purpose, and every mischief of result. Great characters, known characters, strong characters can resist it, but it is for us, gentlemen of the jury, for you and for me, to protect men in the common level of life, like ourselves, from such calumny. A wave that would be dashed to pieces on the quarterdeck of a man-of-war may swamp her cock-boat and destroy the lives that are in it.

All the pelting with which Mr. Beecher has been followed through years and years has produced no effect upon him.

But calumny, calumny, gentlemen of the Jury, takes its effect on those against whom it is aimed just in proportion as their general character and life are hid from observation and untested by great opportunities or trial. Now, gentlemen, we might as well start here with understanding the character, not of Theodore Tilton—he has not introduced a new *character* into human affairs—men of these evil dispositions, men of this wicked conduct, have lived long before him. This union of open and outward display, this pretension, this self-satisfaction that Mr. Tilton and Mr. Moulton exhibit themselves before you as clad in—are the very traits that are associated in all conspiracies. Why, the companions, the instruments, the agents of Catiline were of the same kind. They were long ago described—these men, Tilton and Moulton—by a great advocate much better than I could describe them, although what he said was two thousand years ago, and of others: *Hi pueri, tam lepidi ac delicati, non solum amare et amari, neque cantare et saltare, sed etiam sicas vibrare, et spargere venena didicerunt*; these youths, so jaunty and so slick, not only practiced the arts of freely loving and freely being loved, nor the graces of an airy rhetoric and a bold gesticulation, but also have learned to ply the dagger of the assassin and scatter the poisons of calumniators.

It is very well to think with complacency, as Mr. Tilton obviously does, of the showy, the brilliant, the accomplished, the gratifying traits that make the showy external of base motives, base conduct, and wicked purposes, but he has not the credit of being the model and type. Such men have lived always, and always will live; and they have been understood always, and always will be understood. Far be it from me to disturb his complacency; if it were ever valuable to him it is more valuable now than ever. Horne

Tooke said that he didn't see why a man should not thank God for his self-conceit as well as any other of the good gifts of Providence, and it certainly does carry a man through the world with a pretty high head, and with considerable enjoyment which is lost by the modest and pure.

Now what passions of our kind are there that we can trace motives to, for I may as well apply the criticism at this earliest instance of malignancy and hypocrisy as at any other. You don't need to eat a whole loaf of bread to know that it is sour. A wise man eschews further experience of that batch. But some people will keep on eating and eating, thinking that the sourness has not struck in; that it has not, at least, reached the bottom crust, and that you may get a little healthful nourishment, and you had better not discard the bread until you have had a full trial of it. Well, if you take a loaf of sour bread in your stomach, you will be apt to find out enough about that indigestible fabric not to try another.

Now, envy, as we call it, in its true sense as it is used by the classic dramatists, and in the Holy Scripture, either in the Old or the New Testament, is the counter passion to love and charity in the sense of the embrace in brotherhood of all mankind. "Envy frets itself because of the prosperity of others and pines at their superiority." It finds its complacency, it finds its occupation, it finds its goading impulses in the destruction of that prosperity and the abasement of that superiority. Emulation, which is the noble competition and the great and beneficent influence that great characters have on those who are their contemporaries or who follow them, is turned into the wicked passion of envy. And, as the very essence of love is that it delights in the happiness of others for others' sake, as, when you come to the sexual relations, the love of marriage is distinguished from meretricious love by that distinction, that the love is of the person loved, and beautified, and glorified in your affections, and in meretricious connections it is the gratifica-

tion of selfish appetite, regardless of whatever degree of misery and ruin is inflicted upon the object of the meretricious love. So envy, the hatred of men, is the great wicked master passion, as love is the great, noble, sacred passion of our nature, beginning when the infant with a smile recognizes its mother, growing till the youth takes the bride by the hand to the altar, ending for this life only when the wife is laid in the grave; and through all, expanded, purified, intensified, elevated, until, at last, it is lost in the universality of the sea of love, not because it is any less intense, nor that it has lost its lustre, but simply because it has faded, as the stars fade in the morning in the full blazonry of the sun's illumination.

Now, where does envy or malice tend, and do its ravages cease with its single first object, or does it grow like other passions upon what it feeds on? Does it extend through the whole frame of the moral, the intellectual, the industrious working of the man? Why, if your eye be single with this true passion of love and duty, your whole body shall be full of light. But if your eye be evil, your whole body shall be full of darkness; and how great is that darkness! The ancients have a stern maxim marking the absoluteness of the dominion of this evil passion in few words, but which leaves nothing else to be said about it—" *Invidia festos dies non egit.*" Envy, malice, keeps no holiday. And Theodore Tilton spent Christmas in forging a weapon that he says he meant to strike Mr. Beecher to the heart with, and New Years in preparing what he himself calls in his writing, "a New Year's present to Mr. Bowen."

Well, talk of confessions, talk of indications of character, of purpose of nature; it is a by-word, "Actions display the man." Treatment of himself, by himself, in his own description of himself, leaves nothing to be said of him by others. You don't need to search the heart of a man who boasts of his malignity, and takes credit from its horrors. Nor do



you need to measure the conduct of such men with such characters, and think how far they will go, and where they will stop, or that this, or that, is too much. No wise man thinks any more of this credulity, this incaution toward such characters, the heart of whom is understood, than he does of measuring the depth to which a vulture will dip its beak in the heart blood of its prey, or how manifold or how merciless shall be the coil and the crush of the serpent when it entwines its victim. Let men who wish to run these experiments with reptile characters in animal nature try them. Let men who wish to, run these risks with the wickedness of the heart, when that is confessed. I read to you the list of evil that comes out of an evil heart as given by one who knew what was in man.

Now, having cautioned Judson never to assume to be his friend further, and never speak to him again, he wrote Mr. Beecher this letter:

MIDNIGHT.

BROOKLYN, November 30, 1865.

REV. HENRY WARD BEECHER—My Dear Friend: Returning home late to-night I cannot go to bed without writing you a letter. Twice I have been forced to appear as your antagonist before the public, the occasions five years apart. After the first time I am sure our friendship, instead of being maimed, was strengthened. After this last, if I may guess your heart by knowing mine, I am sure the old love waxes instead of wanes.

That was when the quarrel about the peaceful tendencies of Mr. Beecher was fresh, and when for some charity that had been extended to the fallen foes among our countrymen by Mr. Beecher, he was condemned with an exhaustive vituperation scarcely equalled by the secular press.

Two or three days ago, I know not how impelled, I took out of its hiding-place your sweet and precious letter written to me from England, containing an affectionate message which you wished should live and testify after your death. To-night I have been



thinking that in case I should die first, which is equally probable, I ought to leave in your hand my last will and testament of reciprocated love. My friend, from my boyhood up you have been what no other man has been, what no other man can be. While I was a student, the influence of your mind on mine was greater than all books, all teachers. The intimacy with which you honored me for twelve years has been, next to my wife and family, the chief affection of my life. By you I was baptized; by you, married; you are my minister, teacher, father, brother, friend, companion. The debt I owe you I can never pay. My religious life, my intellectual development, my open door of opportunity for labor, for public reputation—all these, my dear friend, I owe in so great a degree to your own kindness that my gratitude cannot be written in words, but must be expressed in love.

Then, what hours we have had together! What arm-in-arm wanderings about the streets! What hunts for pictures and books! What mutual revelations and communings! What interminglings of mirth, of tears, of prayers!

The more I think back upon this friendship, the more am I convinced that not your public position, not your fame, not your genius, but just your affection has been the secret of the bond between us. For, whether you had been high or low, great or common, I believe that my heart, knowing its mate, would have loved you exactly the same. Now, therefore, I want to say that if, either long ago or lately, any word of mine, whether spoken or printed, whether public or private, has given you pain, I beg you to blot it from your memory, and to write your forgiveness in its place. Moreover, if I should die, leaving you alive, I ask you to love my children for their father's sake, who has taught them to reverence you and to regard you as the man of men.

One thing more; my religious experiences have never been more refreshing than during the last year. Never before have I had such fair and winning thoughts of the other life. With these thoughts you stand connected in a strange and beautiful way. I believe human friendship outlasts human life. Our friendship is yet of the earth, earthy; but it shall one day stand uplifted above mortality, safe, without a scar or flaw, without a breath to blot or a suspicion to endanger it.

Meanwhile, O, my friend, may our Father in Heaven bless you on the earth, guide you, strengthen you, illumine you, and at last crown you with the everlasting crown. And, now, good night; and sweet be your dreams of your unworthy but eternal friend,

THEODORE TILTON.

Now, gentlemen, you understand what words are worth, written or spoken, from this man. When, three days before, his slanderous tongue had spoken mischief, and a common acquaintance of Mr. Beecher, the recipient of his leasings, asked this, at least, about Mr. Beecher—"that there never have been any suggestions against his morality in respect of women," and Theodore Tilton, with the thrice-acted pomp of duty to friendship, and fidelity to truth, which forbade to say what was true, said, "I have lost my faith in man," and when asked what point there was in that in regard to Mr. Beecher—"I have lost my faith in man," and a third time pressed, "I have lost my faith in man," and then, at midnight, in order that it might be preserved after he is dead, if he should die suddenly or take poison—what poison would operate?—preserves this record. Are such characters new? They are not common. We should have got out of this world into another if the staple of our society were made up of such characters. No; "a serpent heart hid in a flowery face" is a character as old at least as Shakespeare, and thus preserved by him.

Now, gentlemen, there is nothing in all this unless it seems to you to rest, as it does to me, on a correct, intelligent, candid, and not uncharitable estimate of this plaintiff's character as disclosed by his own evidence. Such I believe it to be; such the juxtaposition that we are able to make of things said in private and demonstrations made in public, shows you the character. It shows you its discords; it shows you its main current of purpose and of blood; it is the character. And it shows you more. It shows you that, when you are dealing with a disputed question of a

particular line of conduct or incident or relation, between two men, if you can only get hold of enough of their respective characters you can tell whether one or the other construction of the controversy is to determine, comports with the characters as disclosed, outside of the particular controversy, of one or the other.

Truth comports with, agrees with, every fact—physical, moral, and spiritual—in the world. Error may confuse; error may distort; but be sure that there is no one truth that is not compatible with every other truth in the material creation or the moral relations. Sometimes by fortunately or skillfully acquiring facts enough to see whether the particular fact will comport with them, the cross-examiner is enabled to baffle the false purpose of a witness. Why what is cross-examination, in its subtle, penetrating power? Some think it is to exhibit the infirmity of memory, and the inexactness of expression by words, and that a great feat is accomplished when, by asking a witness to tell a long conversation over two or three times, the witty and profound cross-examiner has demonstrated that the thing cannot be done. Well, everybody of any sense knew it before. How often did the counsel exhibit to you their inability—and I don't refer now to my learned opponents any more than to ourselves, the counsel before you—their inability to repeat, after a ten minutes' interruption by a legal discussion, the very question that had been asked before the discussion began, and was allowed to be repeated, and before your eyes, and without the least shame or annoyance, we asked that the stenographer might read the question because we could not repeat it. Now, with such a confession of this common trait between witty and profound cross-examiners and commonplace untrained memories, it does not seem to me a very great triumph of cross-examination to exhibit this incapacity. Indeed, if the rote was followed completely in the second relation, it would show that it was

learned by heart—had been committed to memory. But when cross-examination, ignorant at the start or imperfectly instructed, undertakes to demonstrate the improbability, the falsehood, of an immediate statement by showing its incompatibility with facts that shall be arrayed around it, and how it will not comport with them, then it is that the cross-examiner follows this great rule and principle of truth, that truth, if truth, will match all round, with material facts, with moral qualities; but if it be false it won't; and if that triumph in the cause of justice, in the service of truth, follows the employment of the trained art of the lawyer, it is a great and beneficent result; but if confusion of error, contumely on the weakness of memory, laughter at the indifferent mental qualities of this or that witness, is the only result of cross-examination, it may answer to an immediate purpose, but it does not serve justice or promote truth.

Now, I will give you two amusing incidents of how truth will comport with all truth, however remote it may seem. It was amusing enough when it happened, and my learned friend Judge Porter has called it to your attention. When Mr. Tilton wished to convict Bessie Turner of a lie with a circumstance, he gave you as a reason that her story was false, and his was true, about his speech in regard to his gray hairs going in sorrow to the grave, that he had not any gray hairs at that time. Well, that shows that he put the question of whether Bessie or he told a lie on that fact. That was the test; and he thought he knew about the gray hairs in his head, or at any rate, if he didn't nobody else did; but Bessie had combed his head; Bessie had told you how frequently she had combed his head, and I find that people who don't grow the gray hairs are quite as likely to see them as those who do. But he had forgotten—and, indeed, he does not believe in the verbal inspiration of the Scriptures—he had forgotten that it is written, "Thou canst

not make one hair white or black;" even under oath you cannot do that. Ah! but he had forgotten more than that; he had forgotten that even the hairs of the most worthless heads are all numbered. When the truth comes to light in his own letter, written three years before, when he told his wife, "Gray hairs since our marriage have stolen upon us," he shows you what there is in my suggestion that truth matches all the truth in the world, and that a lie does not. Bessie's statement matched all round, and his broke at the first attempted connection.

Well, we have another witness, a Mr. Martin, and he thought, inexperienced in the practice of truth or in the arts of falsehood, that if he told a story in words, and there was not anybody to contradict him, or at any rate, if it was only words against words, that he could do some damage to Mrs. Tilton by his testimony gained in a friendly intercourse with her; and so he told you that he and she being too warm in the room up stairs, went down, about half past two in the afternoon, to sit on the piazza to get cool. Well, now, there is a matter that does not seem to have much to do with the solar system *per se*, by itself; but you have got to match all around, and truth does it without an effort, and falsehood never; and so he was shown that the sun blazed there in that July afternoon, with the thermometer among the nineties, and yet they had gone there and sat because it was a cool place! Well, that looks a little as it he had run against the solar system, doesn't it? But what is that to an ingenious mind like Martin's? Genius shows itself when most hard pressed, and its extempore efforts are sometimes its greatest; so he said, putting down this captious notion of sunshine, "Why, there was a brick wall on the side of the piazza of the neighboring house that extended out its deep embrasure and kept us from the sun." It looked a little, then, as if the solar system was not, after all, to triumph; but we brought an occupant of the house and they



sent a surveyor, and there was no brick wall there. Now, sometimes men run their heads against a brick wall; but the trouble with this Mr. Martin was, that he dashed his brains out for the want of a brick wall. A. B. Martin: A Broiled Martin! Well, when he comes on the stand again he will study the solar system, and also brick masonry.

Now, as we go on we shall find many illustrations of this antagonism which corrects falsehood; and it proves something more, and we might as well start here with understanding that. This is not the first cause that has ever been tried; these are not the first witnesses that have testified and been tested. It is not the first time that the learned Judge and my experienced opponents, or even ourselves, have had to observe and lament the difficulties and the weakness of testimony, and lawyers have hardened their experience into a maxim which the law follows, and instructs juries to follow, and which the conscience and the common sense of jurors impels them, compels them, to follow. It is, in the brevity of the law maxim in Latin, *falsus in uno, falsus in omnibus*; satisfy yourself that a man is false in one thing, and you must judge him false in others. When a man tells you with his own mouth that he has lied through a series of statements under a motive, and then that in another series of statements, under another motive, he does not lie, you have, in your common sense, one question for him: "How shall we trust a lying tongue to tell us *when* it lies?" Now, would not that be nice, to have a man come and say, "I lied then, and then, and then, under a motive; I now come here and tell the truth." "Well, have you any motive here?" "Oh! yes; I mean to strike Beecher to the heart; I mean to drive him out of Plymouth Church; I mean to pursue him to the grave." Well, that is enough—a motive. Now, would you feel like sensible men if you should base a verdict upon that testimony; allowing such a man to pick and choose for you the things that are true,

and taking them on his saying so? There is an end of that; and, unluckily, Moulton and Tilton are on the same platform, for that matter. Moulton has given you the series of his falsehoods, and he now gives you the series of his statements, and you have got to let his tongue choose; his motives you have in his statement that he would have the life of Beecher, that he would destroy him, and all the villifying epithets that one man can bestow upon another have been used by him on the stand and under oath.

If your honor please, in this cause we do not need to trust to the maxim so firmly established, so wisely considered, carrying such conviction, both to the legal and common understanding, as "*falsus in uno, falsus in omnibus*." The record in this case in its whole web of hypocrisy, of false statement, of prevarication, on their own showing, requires us only to take this, the converse of the proposition, "*falsus in omnibus, falsus in uno*." You have one question to determine, whether the truth is spoken about it, and they have shown themselves false in everything: in character, in conduct, in concealments, in prevarications, in spoken falsehoods, in written falsehoods. Ah! gentlemen, it is a terrible thing to have the length of a trial, and the methods of the law unfold a tissue and a web of false character, the woof and warp of which are all false. And then you are asked to believe that in that texture, in that tapestry, there is at least one thread of truth. They say to us, "*Falsus in omnibus, verus in uno*"; false in all else, true at least in one thing; for it is not in human nature not at some time to speak the truth, and this is the occasion.

But I said to you that the affirmative force of the negative proof is itself immense, when you are satisfied of the opportunities; and I digressed to exhibit you the attitude, as early as 1865, of Mr. Tilton as a watcher in his own household, and as a watcher of his wife. Let me show you a little of his condition of mind about Mr. Beecher as a visitor

and an inmate of his household—as an inmate of his house, and a friend of his wife—from another statement of his in writing:

About ten or eleven years ago,

and this was written in 1872, or thereabouts, it carries it back to 1862:

About ten or eleven years ago Henry C. Bowen, for whom I was then working as a subordinate in "The Independent" office, told me one evening, while crossing Fulton Ferry, that Henry Ward Beecher was guilty of adultery, a practice begun in Indianapolis and continued in Brooklyn.

That was in 1862. It had run some years at that time.

Between the years 1860 and 1870 Mr. Bowen repeated the accusation not less than a hundred times—(so it had not slipped his mind)—frequently exhibiting the deep sense of a personal injury, and sometimes saying that if he was so minded he could drive Mr. Beecher from Plymouth pulpit.

Now, either Mr. Tilton believed Mr. Bowen or he didn't, or else Mr. Bowen never said so, and I am sure I don't know how we are to find out the latter. Mr. Tilton has said so here. He has said so on the stand in some degree. Mr. Bowen, their witness, was not asked by them the question, to purge himself of this imputed conversation and conduct. But, in respect of Mr. Tilton, we may fairly assume that, as against him, we may suppose that he had heard these stories, for he has said so. Now, either he believed them or he didn't. If he did believe them, you see that Mr. Beecher and Mrs. Tilton were under a pretty sharp observation, don't you? A husband, a rival, a man who hated Beecher, and who either loved or didn't love his wife; and he, why, he would watch. If he loved her he would watch; if he didn't love her he would watch. And he comes here and tells you that up to July, the day when his wife made some

sort of a communication to him, which we shall examine on its own merits hereafter so far as it is the subject of evidence—until that time he made her an idol in his head. If there was nothing wrong between Mr. Beecher and his wife, if there was nothing wrong in his visits and his rides—and we have shown you that in 1870, in the winter, when Mr. Beecher had driven Mrs. Tilton out once behind a pair of horses and a buggy in the park, and had been thanked by Mrs. Morse, and encouraged by the great good it had done Elizabeth, and by the invitation of Mrs. Morse he went there a week afterward to give her another ride behind the same spanking team, that he found Mr. Tilton there, and the invitation was given, of course, as it would have been whether he was there or not, and Mrs. Tilton having some reason that disinclined her, he (Tilton) urged her to go. So you have the misconduct evidence, that after that time, which was two years after the adultery, or the second year after the adultery began, while it was going on, before it was discontinued, he had not observed anything, or, if he had, his conduct was not candid and open, was it? He won't take that alternative. If he does he contradicts his oath that he had no suspicion or idea. Now, you will see, then, that the material circumstances of this alleged seduction and alleged adultery are just as inconsistent with all the external circumstances of life in which these parties were placed, and the observation to which they were exposed, as the moral incompatibility of wicked conduct with religious character and pure morality. Now, how can you get over that?

Why, if your honor please, it is one of the singular, perhaps unfortunate, traits in the manners and morals and everyday reasoning of the English people and ourselves, that we have not a single word to describe the husband of an unfaithful wife, that is not inspired with the bitterest contempt and contumely for the husband. There are two words—and

that it may not be supposed that my memory fails me in the exactness of the definition, I will read them to you, gentlemen of the jury. Now, as a plain matter-of-fact definition of the word "cuckold," this is accurate: "The husband of an adulteress"; and then the adjective "cuckoldy," "having the qualities of a cuckold, mean, sneaking"; and then we have an ancient word, not much in use, as indeed the word "cuckold" is not in use, because the occasion for it does not occur in our society. Wittol describes a cuckold as "a man who knows his wife's infidelity and submits to it—a tame cuckold." Now, that shows either a coarse or barbarous feeling, which may, perhaps, account for it. I don't sympathize; I have no desire to sympathize in any such contumely, but it shows the strong sense of our people, whether it has grown up here or at the birth of English manliness before our removal thence from England, and you will find in every language, the German, the Italian, the French, having the same civilization and the same Christian religion, the same contumelious aspersion of the husband. Now, what does that mean? Why, it means that the victims of such injuries are simple, silly, blind, indifferent, carried away by affection to an absurd obfuscation of their observation, and that when the evil finally happens, as it must in its approaches have been noticeable, and if noticed or unnoticed, making no impression—either way the character is contemptible; and to call a man a cuckold (which is simply the husband of an adulteress), carries contumely and aspersion. Well, there is not any other name in the language for him; there is no other word that expresses that condition of the relation of a husband to a violated marriage except that word.

Now, the Roman law, if your honor please, was not so indulgent as merely to visit with contumely the husbands of violated marriages. They had a law in Rome—for the Romans were a virtuous people, the chastity of the Roman matrons and of the Roman maids was equal to that of any



nation, and the grandeur and power of that society, even without a pure religion, shows how much can be built if the corner-stone of the family is maintained by sentiments of honor and reverence. The *lenones*, or pimps, or panders, or procurers, were watched and punished; the crime of *lenocinium* was visited with heavy punishments. That parents should prostitute their daughters, or owners their female slaves, or husbands their wives, was treated as an evil that must be watched and punished; and the *Lex Julia De Adulteriis* provided that any husband who kept or took back a wife caught in adultery should be classed as a *lenocinant* or panderer, and punished as such. It was a condition of the family that was *pessimi exempli*, of most dangerous influence upon society. If the Roman matronage was still to include in their pure roll of honor prostituted wives, wives that violated the marriage vow, where was the honor of the matronage? If young wives entering into matronage were to see that the power of public opinion, and the virtue of that noble state, was disfigured by the presence of wives still cherished by husbands with knowledge of their infidelity, however creditable it might be to the extraordinary charity and affection of the particular husband, it was subversive of the institution, and should not be allowed.

Now, if you honor please, and gentlemen of the Jury, I have not the least idea that Mr. Tilton is exposed, on any facts in his own family, to the least imputation of either this contumelious opprobrium of the English phrases or this darker condemnation of the Roman law. I wish to save him from both—from either—and I think I shall succeed; but he stood on a very perilous edge, and he has got as far down the precipice as he could get of his own movements. And I present, as an utter improbability (not going quite as deep into the foundations of morals and character as those I have suggested about a pure wife and noble woman), but,

I put it to you, that it is a moral improbability of the highest grade that Theodore Tilton has suffered this disgrace in his family. He is a man of large intelligence; he is a man of active doubts and fears and suspicions. He is a man not inexperienced in the wicked ways of the world. He has had, year after year, an inculcation into his mind that Mr. Beecher was a dangerous visitor in the families of the pure-minded women of Brooklyn; and he has encouraged, has observed, has been pleased with the visits of Mr. Beecher. He has seen his wife by night and by day; he has seen her in the privacy which the law says that even the great interests of Justice never should invade; he has seen into her soul; he looked into her eyes with love or hate, with suspicion or fear, during these many years of the seduction and adultery. He has watched Mr. Beecher in his comings in and his goings out; he has talked in restaurants about his want of faith in Mr. Beecher, and has set other people to watching, and thinking, and suspecting; and, now, in two households, such as Mr. Beecher's and Mr. Tilton's—in two houses such as theirs, in the relations possibly more public than when covered by those roofs, there has not come one fact in evidence against them; there didn't enter one doubt, one fault, one fear into Theodore Tilton's heart. Well, I don't think you were able to find any evidence of it. Nobody else could, if he could not. I don't think you will.

Why, gentlemen, consider what it is to have had such vigilant, vindictive, persevering, intrepid, audacious, and trained hounds after a man; and then to see the petty, trivial, contemptible, external evidence produced as circumstantial, or as proof of the facts! Why, gentlemen, we all understand the difference between suspicions, or aspersions, or evidence, not coming against a man because suspicion has not once been opened, but it *was* opened in Mr. Tilton's mind, and kept alive by Mr. Bowen through ten years. He watched and watched, and he saw that Mr.

Beecher was pure, and he knew his wife was. That is the result.

Now, gentlemen, if, in your grain trade a broker came to you and gave you a handful from a cargo of wheat, and you saw it full of weevil and of rust, and he asks you to buy it, you say: "You expect me to buy a cargo of wheat of which that is a sample? Why, a man wouldn't take it as a gift. What is the price?" "Full market price." "Well, you must take me for a fool." "But," the broker says, "perhaps you had better wait and let me tell you. That is all the weevil and the rust there is in the whole cargo. Buy it at any price."

Now, that is what has happened here. He brought you the samples, and it is the sample that is scraped from the whole life of Henry Ward Beecher. Had not Tilton written of violence enough, of vehemence enough, of particulars enough, identified in that New Year's gift he prepared for Mr. Bowen, in which he described the debaucheries and wicked adulteries and rapes of Henry Ward Beecher? Why didn't they prove something? Why didn't they show any proximate traits of conduct or character leading to doubt or suspicion? But I don't put it upon that; I put it upon the question, (turning to Tilton) Why do you dare to say, as you do say, and I think truthfully—I certainly hope truthfully for your character—that until July you had not a doubt, or a fear, or a fault, or a suspicion, in regard to the intercourse of Mr. Beecher with your family—how can you say that and not feel that you have forced yourself into the dilemma of choosing whether you take the contumely of the English opprobrium or the dark stain of the Roman condemnation?

#### RECESS OF THE COURT

But we are not left, gentlemen, on this question of external facts and direct testimony, to mere conclusions from its absence and the absence of witnesses. A witness was

finally brought, no doubt a most estimable person, of intelligence and truthfulness—whether any mistakes intervened in her testimony or not, it is quite unimportant, either to the cause or to this just expression of confidence in her, for me to inquire—and that was the old family half servant, half friend, Katy McDonald, who had gone in and out with that family from 1855, onwards from the marriage to the end, and, now, at present, occupied, I take it, in some way, in connection with Mrs. Tilton's household, a servant or friend, coming to them from her relations to his father's family, devoted to him, descending to him, devoted to the children as his children, no doubt recognizing and feeling the beauty of the wife's character, and having the natural sentiments of an honest heart, exerted in her favor; but still she belongs to the father's side of the house, and in the break of the family, and in the criminations and recriminations that proceed between them, and in the outgoings of her sympathies, and in the adhesion of her fidelity, she stands now with the father and his children, as in his care; and she, called for a purpose of no great importance, showing that their vigilance omits nothing, is wholly silent on the question of whether there occurred anything from the time of the marriage in 1855 to the household break in 1874, that could indicate either evil desires, loose conduct, erring purpose on the part of the wife, or impropriety of visit, in time, in length, in respect to occasion, on the part of Mr. Beecher, within that house—not a word. You find, then, in the absence of all the other servants—for we have called none of them; none of them have adhered to us; none of them are within our control, and yet there were servants running through that family, five at a time, during all these years, their whereabouts, their accessibility not brought into doubt, and not one of them is brought. Finally, the intelligent, experienced, sober, sedate, observation and judgment of this excellent woman, Katy McDonald, is brought before you,

and the reason that nothing is said is that nothing existed in fact and in truth to be said.

Now, you must deal with this matter as between man and man, and according to the ordinary rules of human nature. You are men with the qualities of intelligence, the sentiments of heart and the experience of life that belongs to men, and you are to judge of a man and a woman, and to judge of families, and to judge of actual, practical, daily life, in the face and eyes, and on the level of the society of Brooklyn. You are to judge of witnesses and the absence of witnesses; you are to judge of the frivolity of testimony as it is produced, and the absence of any more weighty testimony which could be produced, should be produced, always will be produced if there is any fact at the bottom to warrant it and give it growth.

These men (Mr. Beecher and Mr. Tilton), this woman (Mrs. Tilton), are to be judged of as men and a woman of our day, of our society, of our daily life, so far as external relations go. They are to be judged fairly; they are to be judged justly. When individual differences, from the common traits of life, whether in intellect, in character, in ideas, in habits of thought, or habits of expression, come to be scrutinized and weighed, each man, each woman is entitled to be considered fairly, according to the texture and quality of their own nature, so far as they are developed on the testimony, although it differs from *your* nature, or my nature. That is fairness; but at the bottom we must judge them as men and women. If they are angels, we have no mode of judging about their conduct. If Mrs. Tilton is all spirit and no body, and Mr. Tilton is all body and no spirit, we haven't any mode of judging such abnormal characters. We assume that intelligence, education, experience, on the part of Mr. Tilton, expose him to our judgment as of a man thus having his faculties, large by nature, sharpened by education, hardened by experience with the world; and it is



—and I put it in the utmost good faith to you, as I have all my illustration and my argument on the question of the probabilities of his having been a deceived husband—I put it to you that it is one of the greatest improbabilities in respect to his intellect, in respect to his character, in respect to his experience, in respect to his life, that it is possible to impute to another. I could almost as soon expect to convince myself that he is not six feet high, that he has not a beautiful rhetoric and accomplished taste, and educated faculty of rhetoric and of speech, as to convince myself that with this power of intellect, and with the traits of heart that this evidence displays, and with the sharpening of all the observations and elements of judgment that treat of this domestic calamity of an invaded household, that he should have been its victim. There is no satire and no sarcasm about it. My point is that there has never been a reason for his suspicion, that there never has been a fault on the part of the wife, that he is not the husband of an adulteress.

Now, gentlemen, laying out of view, then, the trivial and feeble and worthless evidence that bears upon the question of the guilt or the innocence of two excellent people, what is there in the ordinary experience of mankind on these questions, or on the maxims of safety and security that the law and common justice have provided for such controversies—what is there left to inquire about?

I think, as I have said, that but for the great ultimate fact of the question of the vindication of Mr. Beecher against this impeachment, there would be no further inquiry. I think the intelligence and the experience of every jurymen were appalled at the poverty of a judicial examination, when the plaintiff rested, that had simply reproduced the pamphlets of last Summer, and the words that flowed from their mouths; but yet you were kept in expectation, that Mr. Beecher, who knew all, and who, if he came upon the stand, even if he did not fear God, might fear man and his punish-

ments, would not be a witness; they said he never would come upon the stand; three oaths of witnesses were too many to be breasted by a man that was to tell a lie. They were altogether too many; but they were not too many to be breasted by a man who knew the truth, and was going to tell it. If you watch the tortuous courses of the evidence as drawn hither and thither, of Mr. Moulton and Mr. Tilton, you will find that there has been a very great ingenuity exercised to avoid misstatements that carried imputations of consciousness of falsehood, when any such statement ran against *two* witnesses that could speak and contradict the same thing; for the law of perjury, which refuses that a conviction should take place for false oath, by the oath of one witness speaking the contrary under oath, allows the judgment to come if there be two witnesses, and the jury believe the two against the one. And so, day after day, this unhappy human nature of ours showed its qualities, so discreditable to it, in the bravado, and defiance of Mr. Beecher to come upon the stand; and then, when he came upon the stand, I will agree that most of that sentiment slunk away, and, without waiting for his testimony, they knew that he would speak the truth, and that the truth was innocence. But you heard him testify, you heard him cross-examined, and had also heard the immense expectations of what cross-examination was to do. Well, it was as able, it was as discreet, it was as vigorous, it was as skillful, it was as intrepid, it was as comprehensive, it was as penetrating, it was as severe, as is possible in the nature of cross-examination, by any forensic powers that our community furnishes. And then they said, "Oh, wait for the rebuttal"; these men have kept back the damning facts, in order that Beecher might have put himself in their power, giving his oaths and his denials. Well, he had; he had put himself in their power if there was any truth or facts or witnesses to speak against him. Mr. Bell and Mr. Bowen gave testimony which, in its

volume, and in its application, was as valuable to this defendant's case as any witness that was produced on our side, as I shall show you.

And leaving them out, why, a string of people about the relative positions of Mr. Tilton, Mrs. Woodhull and her sister in the Commune procession, filled out the body of the rebuttal. Well, it was never a matter of any consequence what relative positions these people held among themselves in that procession. Honest witnesses, certainly witnesses with whom we had nothing to do, were clear of the opinion, are clear of the opinion, wrote the next day in the newspaper statements of it, published to all the world, of the relation of these processionists on that march. Others come and give you a tangled maze, reduced, finally, on the part of the great political leader who nominated Mrs. Woodhull for the Presidency, to the final conclusion that all he could say in respect of the march, or its order, was that the procession marched. The Chief-Marshal said that he saw them both, Tilton and Mrs. Woodhull, and her sister, Miss Claflin, not connected in the way that our witnesses said, but so that when as he marched at the head of the procession and turned around, he can take in all their persons at a glance of his eye; and Mr. Tilton and Mr.—the Pantarch—Andrews, he swore that they were not in sight of one another. Now, do you believe that the Chief-Marshal, by turning around could see them in the same glance of his eye, and in the same division of the procession, as he said—for he was not on horseback, he was not mounted, he could not see any further than anybody else—and that Mr. Tilton and Mr. Andrews, and Mrs. Woodhull did not know where each were in that procession? Well, I don't know that the Chief-Marshall was right. I have no doubt he was entirely honest. It is difficult to say who is right about all that. But the only merit of this controversy about the relative and accurate positions and relations,

is on a question of veracity, or on a question of exposure to contradiction and contrariety without there being any want of veracity on either side. The great point on which that evidence was introduced by us was to show that Mr. Tilton and these ladies in that communion or association, that had been introduced into the case by Mr. Tilton's evidence—the plaintiff's evidence, not personally, perhaps, but the evidence on his side—carried it so far that they sympathized in public principles, and included in that sympathy the procession in honor of the Commune, which had the history that it had; and included in its history the murder of the Chief-Justice of France and the Archbishop of Paris.

It is seldom, if your honor please, that our profession has, in the experiences and exposures of life, so noble a sacrifice as was there made by the Chief-Justice of France. Held like the head of the clergy, the Archbishop of Paris, among the hostages of this mob; they, the mob, the Commune, desired the Chief-Justice to be a bearer to the government at Versailles of their desire for some terms of capitulation and surrender, on his pledge that he would return if terms satisfactory to them were not accorded to them. He said, "No, I cannot go on that errand. The Government of Versailles will not recognize any obligation to a mob like you. They will never allow me to return; it cannot be that they will allow me to return. No power of my will, no adhesion to my promise, no protestation can ever save me and the cause of truth and faith among men, from the condemnation that I have violated my pledge and my honor. I cannot go because I cannot return." And he submitted to the slaughter, and showed what a lawyer can do at the post of honor, and duty, and in maintenance of his own honor, and, more important still, of faith in human nature that there are men that can keep a promise. The clergy, from the time of the Apostles down, have had the crowns of martyrdom widely distributed among them; and in

modern times, it has been the singular honor, when martyrdoms, when cruelties, when the fierce hatreds against religion and morality have been subdued by the prevalence of religion and mercy—it has been the singular honor of the Catholic Archbishops of Paris to furnish within our time two martyrs to their religion. I am as much a Protestant by birth, by education, by conviction, as anybody, but I would like to see in the rivalry between the old Church and all the branches of the new, and then among all the branches of the new, an emulation of Christian faith, duty, courage, hope, and labor. That is my view of the advantage of emulation among good men.

Well, this procession was in honor of the Commune, that had made these sacrifices of the noble men of France. I am not to dispute the freedom of conscience, the freedom of thought, the independence of action, that belong to men having the courage of their opinions and manifesting them. I question nobody's motives in the procession, provided only they accept the facts, and have the courage to stand by them.

Now, gentlemen, this cause must be explored, in what constitutes the great volume of the evidence, almost entirely, as it seems to me, within the sphere of moral evidence. No doubt, some tests are necessary, on legal principles, as to the degree of credibility of the witnesses, as compared with one another; or, on particular points of evidence, where they may differ. And, gentlemen, I shall assume for the witnesses upon our side no different measure of moral or legal test for your belief in them than I accord to the witnesses of the other side. Errors of memory are as likely to happen to witnesses on one side of a cause as to witnesses on the other side of the cause. Errors of memory are likely to happen even among intelligent witnesses and conscientious witnesses. Nor, shall I presume that, because Mr. Tilton is plaintiff and maintains his theory, that his evidence is to be probed or tested, or in advance accepted, less favorably than



Mr. Beecher's. I propose to test him and Mr. Moulton, and Mrs. Moulton, by the same rules of candor, of justice, of good sense, as I ask to have applied to any of the witnesses on our side. But, that includes the question of character, not as involved in the controversy, for that would decide the controversy in advance, but as exhibited by life, and conduct, and maintained in repute, as shown by them in motive, in candor, in intelligence, in accuracy, in good faith, on the stand during the trial. And, then, I propose that each, witnesses for us and witnesses against us, should be compared in your judgments, for the diminution, or the confirmation of your confidence in them, to the contradicting or the supporting of the evidence, of testimony, given by witnesses in support of either one or the other in this controversy.

The theory of the plaintiff is this, that up to the breaking out of this matter of difference between him and Mr. Beecher, or up to a date some six months preceding, his wife and he held such relations to each other and to their children and to the family as were properly described as an ideally happy home. But I won't hold to epithets—that, up to that time, the sentiments, the feelings, the conduct of each as known to each, their feelings toward each other as expressed, their daily life as seen to the most inmost inspection, was such as belongs to a family in accord, of elevated character and conduct and of happy sentiments toward each other; that the only intrusion, the only rupture, the only discord, the only dissonance, came from the seducer, and through his debauchery; that under (to be sure, they must admit) circumstances of grave import in the affairs of Mr. Tilton, unconnected with this disturbance of domestic happiness—I mean, the disasters which he came to, as between him and his employer and in regard to his employments, his prospects, his livelihood, his fortunes, and his good repute—in connection, I say, with these disasters and this situation which had no relation to the intervention of Mr. Beecher—in connec-

tion with them, it became suitable in protection of the good name of his wife, and the fair name of his children, that he should come into relations with Mr. Beecher to guard against the casualty of a controversy between Mr. Beecher and Mr. Bowen, insensibly and thoughtlessly drawing into it this aspersion and this disgrace to his family; that thereupon all the purposes of all the interviews was to secure that result of secrecy. To be sure he had no idea that Mr. Beecher would on his own account desire to explode and expose the matter. He was quite sure that his wife was nervous and sensitive as to any exposure coming from her; and in respect to himself, why he would have "lost confidence in human nature" if he didn't suppose he would want to keep it secret. So you have then, thereafter, when the secret is known to these persons, on their own theory, the most ponderous system of machinery to keep the secret, the most extensive and elaborate reduction of it to writing, apology, and defense, accusation, argument, reasoning, all put into the permanent form of writing, and then a judicious, to be sure, and circumspect communication by Mr. Tilton to a handful of friends, or those who he thought ought to know about it, in order to secure the secret; that then there came to be a necessity of suppressing or humoring to the result of preventing any hostile promulgation—I mean, the publication in the interest of the opposite opinions of society and religion of this exposure of the conduct of good, excellent people; and that then there came to be a prolonged, a manifold, diversified, intricate series of confidences, efforts, plots, falsehoods, to keep the secret that had thus been communicated and had run down the streets like water; that, in that, there came to be the necessity of a compulsory association by Mr. Tilton, and by Mr. Moulton, as his coadjutor, and by Mrs. Moulton as the wife, with persons whose association, as it runs through this evidence, as produced by the plaintiff, is denounced by him and his witnesses as discreditable in a

very high degree; that that policy, judicious, deliberate, circumspect as it was, failed, and there came to be an outburst of the Woodhull and Claflin promulgation in the end of 1872; that, then, it was necessary to have new devices and new conferences to put the secret back again where it was before the enginery for its suppression, ending in the result of its explosion, was first constructed; that this suppression was approached, success was again frustrated, and, finally, duty compelled Mr. Tilton to reverse the policy of saving his wife and children and commencing their destruction; that all the while Mr. Beecher, as he ran along as party to these confidences, these conferences, and these plans, was leading a life and exhibiting lines of action and conduct which were in the nature of circumstantial, or argumentative confession; that in regard to the collateral or interior arrangements which sprung out of suspicious accusations, examinations on the West charges, or on the inquiries concerning Mr. Tilton's continued membership of the Religious Society of Plymouth Church and its responsibility for him, and during the council called by the neighboring and sister churches from the general denomination; and then in the intolerable wit of Dr. Bacon, which galled Mr. Tilton, came the final and definite promulgation of the scandal of the Bacon letter, followed then by the formal, sworn accusation of Mr. Tilton, by the evidence contradicting, refuting, suppressing it, and relieving Mr. Beecher, and then by the bold, irresponsible, unmeasured accusation of the public press after the trial was over by the long, elaborate papers of Mr. Moulton and Mr. Tilton.

Now, gentlemen, this is their theory. They thought that the boldness, the heinousness, the elaborateness, the circumstantiality of the charge, including picked items of evidence, selected pieces of Mr. Beecher's handwriting, re-enforced by a foul accusation that had nothing to do with the relations of Mr. Beecher and Mrs. Tilton (except in the way of black-

ening his character and preparing public belief to believe him a scoundrel and a debauchee) I mean the Proctor imputation, was thrown into the elaborate denunciations of Mr. Moulton under the counsel of a wise adviser, as he was regarded, and with the purpose to strike death in the public judgment, forestalled, excluded, derided, the question of resistance, of inquiry, and of truth.

Out of all this heat there came a viper, as when that reptile fastened upon the hand of St. Paul, but the Apostle shook it into the flames, and the barbarians looked to see that he should have swollen with the poison or fallen down suddenly, for they thought that he was a murderer that vengeance had pursued in the form of a viper. But when they had waited a long time, and the Apostle showed no change, they changed their mind and in the same rudeness of superstition they said, "He is a God." The viper did as little execution on the physical life of the Apostle and came to as speedy a death himself as the malignity of this poisoning of the life blood of character has accomplished upon Mr. Beecher. It was a terrible trial, a terrible ordeal. No man could wish to be exposed to it. But, nevertheless, when the best test came, better than the oath and the judgment of jurymen, however conscientious and however intelligent, under the limits of testimony, which after all is but ragged and piecemeal compared with the knowledge of a man's life by men who have known him always; when the Christian men and women that knew Mr. Beecher for twenty-five years see him in their houses, and in his and their church, and see him in the world in all his labors and all his conduct, when they without dissent confirmed his virtue, and their virtue quite as much, by their judgment, they had shown the difference between Christian men and women and barbarians. For they did not wait to see whether he would have swollen under the poison, or whether he would fall down suddenly,

for they knew he was not a murderer, and they did not fear the viper or his poison.

Now, gentlemen, the general theory of the defendant's case is this; that the relations of Mr. Beecher and Mrs. Tilton were, in the judgment, feeling, and apprehension of both of them, as Mr. Beecher understood while those relations were growing up and going on, entirely moral, faithful, true, wholly above suspicion on the part of others, as they were wholly free from suspicion that there could be misconstruction on their own part. Both these people recognized the duty not to be led willingly into temptation, both recognized the external duty of avoiding the appearance of evil, and neither of them imagined that in either carelessness or attraction there was anything that was not as open as the day, and that was not as clear in the inspiring motives, and in the actual sentiments, developed in that intimacy, as the best and severest judgment could require; then, that by what was a revelation to Mr. Beecher, the desertion by the wife, in the month of December, of her husband's house and his protection, and an appeal to the judgment of the pastor and so, gladly, of his wife, on his suggestion, and then of the church, if that should be thought advisable (in respect to which Deacon Bell was consulted), there came to be a very distinct and very lamentable occasion to discover the household not to have been happy, and growing faults, and growing discords, and growing opprobriums, and growing dangers, such as to require a definite course of action to dissolve that family for temporary and restricted opportunities of safety to the wife, and of hope for correction, remonstrance for the husband; that that matter came to an end, so far as Mr. Beecher was concerned—so far as it was an element of duty or of consultation with him, or on his part; that then there came to be a new and equally sudden, and equally unexpected, and equally unintelligible assault upon him in the name of Theodore Tilton, brought to him by Mr.



Bowen on the 26th of December, in which, with all the pride of an emperor, Mr. Tilton required Mr. Beecher to quit further obedience to the duty of preaching and to leave Brooklyn. That came to an end so far as Mr. Beecher, or so far as disturbing him, was concerned, in about five minutes after it was communicated. That was the end of that, and he neither inquired nor cared what wild inflammation of enmity or of suspicion had started this arrogance or this malice of Mr. Tilton. The testimony leaves all this undisputed, that he did not move a hair's-breadth or seek for an interview with anybody; and when my friend Mr. Fullerton, thinking he was going to put a poser to him, said, "Then you settled down on your indignation did you, all that week?" Mr. Beecher answered, "No, I settled down on my work"; and that is exactly what he did, and that he has done always at every stage of this matter.

There has not been an interruption, whether with alarm mainly for others—mainly for Tilton and his family, or disturbance or appreciation of the turmoils and bewilderments that would grow out of irresponsible and unregulated meddling by people in other folks affairs—none of these have interrupted a sermon, a prayer-meeting, a pastoral duty, a public service, or a night's rest. That when in the same week of the 26th, on the 30th of December, Mr. Tilton opened to him grounds of complaint which he had against him, which were serious and excited serious commiseration for the disasters that had fallen upon the family, the prospects, the fortunes, and the livelihood of these persons, for whom everything from the beginning to the end shows that Mr. Beecher felt a great regard, and, although he might not approve Mr. Tilton, a great responsibility and anxiety for his restoration; that thereupon Mr. Tilton's character and life, as Mr. Beecher had rashly misconstrued it on insufficient evidence, was restored by the asseverations and the intimate knowledge of Mr. Moulton concerning it, and any

part that Mr. Beecher had taken in either increasing, or confirming, or assuring Mr. Bowen's resentment, condemnation, and dismissal of Mr. Tilton, became the occasion of self-reproach to Mr. Beecher.

But more than all, that Mr. Tilton complained then, that there had been bred in the affections of his wife a strong attachment and a conflicting feeling as between Mr. Beecher and her husband, that had qualified, had reduced, had disparaged the absolute devotion and the unquestioning submission that had formed the whole fabric of their marriage before; and then that this lady had, either by some confusion of mind, or by some unhappy subordination to a wicked purpose, to make peace with her husband, been led into making an extraordinary accusation of himself. I do not take up the details of interviews or of statements until I come to them directly upon the testimony; but we shall see that under the impulses (which were pressed upon him and developed and exaggerated by these parties) of commiseration toward the family suffering these unhappy disasters, and of self-reproach for any share, either in these external matters, or, more seriously, in the unconscious and careless and thoughtless progress of a woman's attraction beyond the duty of undivided submission to the husband and special devotion to him, Mr. Beecher was led to concur in the great duty, as well as the unmingled interest, that there should be a reparation for the broken fortunes of this family as far as justice and truth, kindly and liberally measured by affection on his part, should carry him; and above all, there should be an exclusion from the public eye of these unhappy dissensions in the family and of any connection of himself, however innocent, as their cause; that thereafter, what was called a "policy of silence," which he supposed was an honest, an open, an upright purpose in good faith to secure the protection of this family, as it was pressed upon him by Mr. Tilton as the sole object of his resort to him, and by Mr.

Moulton, as Mr. Tilton's agent and friend, as the first duty, the indispensable duty to precede, or make possible, the restoration of the external fortunes of Mr. Tilton; that under that everything that was done, everything that was said, everything that failed to be done, everything that failed to be said on his part, was subordinate to, was in good faith conformed to, was a necessary and faithful maintenance of, his duty as pledged, and as supported by every moral and religious consideration. Then, that all the efforts in regard to the improvement of the affairs of Mr. Tilton, to the establishment of a paper for him, and in regard to pecuniary assistance, were all faithful, honest, and just efforts, liberal if you please, growing out of an exaggerated sense of duty and responsibility on Mr. Beecher's part, but still, in accord with his whole nature in all that he has ever done, all his life—that all these efforts, which have been turned into arguments and evidences of consciousness of guilt, to be suppressed or brought out from this husband and his friend, by a party involved in guilt, were all of this elevated, straightforward, plainly intelligible character and motive; that all anxieties, that all efforts, in any form, were simply to maintain unbroken, against strangely inexplicable and adverse influences, as we now look at them—to maintain unbroken this good faith and this promise and prospect of restored domestic confidence and improved business relations of this family.

Now, gentlemen, the range of this evidence opened itself under the plaintiff's introduction and presentation of his case. This fact was adultery, which usually is open to the proofs of the nature that I have proposed to you, and which, when it could with such confirmatory confessions as, under a just scrutiny, may be accepted and trusted, could take but a very short time, was made, under their lead, to consume many weeks, to involve an examination of Mr. Tilton himself, that covered, I believe, in the direct form, over eight

days, and of course involved a considerable consumption of time in cross-examination; that on the part of Mr. Moulton covered many days, and on the part of other witnesses took a considerable time, and involved an examination of all these lines of conduct, and all of them exposed to you, and presented under the oath of the plaintiff, and of his supporting witnesses in maintenance of his theory of the case.

Our duty involved us in the necessity—for we could not stand upon points of law, or appeals to the arrest of irrelevant inquiries which went beyond any of the actual and substantial evidence that could support any verdict, whatever your conclusions might be upon them, without being exposed to the imputation of excluding Mr. Tilton's evidence, or of excluding some inquiry that might suppress the truth,—our duty involved us in the necessity of meeting the plaintiff's evidence by that which we have presented to you. We never, gentlemen, have given any evidence in this case by itself for the purpose, of itself, and by itself, of aspersing, depreciating, or injuring Mr. Tilton, outside of the relations to the proofs of the accusation here. Nor have we given one word of testimony with the purpose of affecting what is called the question of damages that should be recoverable against Mr. Beecher, by showing, as is permitted by the law, and as, in many cases, may be proper when there is a contest involving money sought on one side, and money sought to be saved on the other—we never have given one word of testimony with any such purposes as that. All our evidence has been to meet the false views of the condition of that family in respect of peace and happiness; the false statement that any disturbance of that peace or happiness came from the intrusion of Mr. Beecher, or any other seducer; the false view that the complaints against Mr. Beecher grew out of that interference; the false pretension that Mr. Tilton owed his disasters, in respect of Mr. Bowen and his employments, to any malignant influence of Mr.

Beecher, instead of to his own damaged reputation and his own misconduct; and such necessary disclosures bearing on that question as grew out of Mrs. Tilton's resistance to further reproaches, and further disgraces, and further oppressions from the misconduct of her husband. That the pretenses of Mr. Tilton that there was no selfish or sordid motive and object in the impressions, and the false impressions, which he desired to produce upon Mr. Beecher's mind, in order to secure his aid, his commiseration, his good disposition toward him, that those pretenses, I say, of the want of a sordid interest upon Mr. Tilton's part, had no foundation; and, as we go into the details (it is not worth while now to anticipate them—it would be a useless consuming of time) of the motive and the character, as pretended on the part of this plaintiff, of his associations and his efforts with Mrs. Woodhull, whatever they may have been, we shall find that the pretense that they were excited, were measured, were directed by any interests or any relations of Mr. Beecher's, is equally false; that those relations, whether they were suitable or unsuitable, whether the lady is of a character, and her house of a repute that made the visits of Mr. Tilton, of Mr. Moulton, and of Mrs. Moulton suitable or not, did not grow out of, and were not measured and numbered by, any interest or any feelings or wishes of Mr. Beecher; that in regard to the measures and efforts by which money came into Mr. Tilton's pocket, all the pretenses that those measures and movements were but for the just collection of a conceded debt, so far as Bowen was concerned, were untrue; and that, in respect to the contributions to Miss Bessie Turner's support at her boarding-school in Ohio, the pretense that they were in Mr. Beecher's interest for the suppression of a scandal against him, were equally false; that there was in her removal the object of the protection of Mr. Tilton's reputation, against her knowledge and her probable evidence, if occasion should arise, and that Mr. Beecher's relations to the matter began



and ended with the idea suggested to him that Mr. Tilton's means did not permit him to bear the expense of this measure to which he resorted; that, when there came to be either an actual resort to pecuniary contributions, to make up a fund to carry along the enterprise that had been founded, by the friends of Mr. Tilton and Mr. Moulton, without any contribution by Mr. Beecher—I mean “The Golden Age”—and when it came to the point where it was represented by Mr. Moulton that without a considerable sum of money, some thousands of dollars at least, the enterprise must come to an end, but if tided over this period, it might hope for an established prosperity, and when a generous friend of Mr. Tilton had been ready to furnish the means, and had impressed Mr. Moulton with her munificence, but when that high sense of honor and delicacy which characterizes Mr. Tilton made it unsuitable that he should accept such friendship, that then Mr. Beecher, under these motives, and only these motives, of endeavoring, of professing, of desiring, to do all that reasonably, or unreasonably, could be asked from generosity and friendship, gave the contribution that has been put in evidence before you.

Now, in running out those lines in counter movement to their production of those lines of evidence, there has come necessarily into display a large area of Mr. Tilton's conduct, concerning which he originally gave his views as true, concerning which we endeavored by cross-examination to give at least a reasonable statement of what the truth really was, but concerning which it became our duty, by evidence exposing his conduct, of certainly a not very agreeable character with certain unnamed ladies, and the real length and breadth of his admiration of the character and the principles of Mrs. Woodhull and her new dispensation, to traverse and collect from the region which we traversed a combination, a variety, a weight, a power of damnatory evidence which has, in your judgment, not with any complacency to my

client, or my client's counsel, put this matter upon the footing of truth.

Now, gentlemen, in regard to the antecedent period, before we come to the first movements of actual opening important relations to this controversy, I mean the month of December, 1870. Now perhaps all that I need to add here to what I have already laid down as the length and breadth and utmost scope and impression of the evidence of such relations as existed between Mrs. Tilton and Mr. Beecher—I need, I say, perhaps only to add to that, that no love-letters of any kind have been offered or pretended to exist between these parties, Mr. Beecher and Mrs. Tilton, during the whole period of their acquaintance down to this very month of December, 1870. Not one letter. All the letters of an inculpatory character that have been produced in this case, of written communications between the paramour and the wife, have been letters written by Mr. Beecher after the accusation, and the whole apparatus and machinery of the December and January and February interviews had been through with, or while they were going on, openly left by the wife, as she left everything when she left the house, exposed, and her taking with her, as her husband said, nothing but his love and good will, which she still had. And in respect to the letters to Mr. Beecher from Mrs. Tilton, they were all after the explosion, all during the period of arrangement, or after the period of reconciliation, and all, so far as my memory goes, made as deposits in the hands of Mr. Moulton.

Well, now, that is a very odd state of things. They were letters begun after the situation has been made public by the husband and his friends, and we actually have had, I think, not much on this trial. Still, I cannot say what my learned friend may think his duty and the truth of the case may call upon him to say in his behalf when he follows me; but I think not much on this trial, but in some publications that

are part of the public history of the case. Some of these letters have been made the occasion of the basest and vulgarest interpretation, such as I am sure Mr. Tilton in his senses could never have imputed to his wife, for he has said to you, there was nothing lewd could possibly find a lurking place in the heart or the life of Elizabeth Tilton. And on the part of Mr. Beecher these subsequent letters have been made the imputation against him of gross and coarse, vulgar equivoques, that were introduced to the notice of an exasperated husband, and of a largely experienced friend, in matters of common life (Mr. Moulton), and first have their appearance in the life or the writings of Henry Ward Beecher in these subsequent letters.

Well, gentlemen, this proves, as all such efforts do prove when tested, evidence in favor of these parties. Rightly explored, sensibly and naturally read, there is nothing in them but the most elevated expression of feeling and purity. But if there is in these letters these coarse, loose, lewd exhalations from the heart of Elizabeth Tilton, what becomes of the theory, the comprehensive, and, as I believe, the honest testimony that Mr. Tilton has borne to the absolute purity of her thoughts as well as of her heart—what becomes of the generous, simple, complete, all-comprehensive confirmation of this purity of mind and of heart which Mrs. Bradshaw, their witness, has given, in a phrase of singular power, when, in addition to her delicacy, her morality, her piety, her devoted love to her husband and her children which this lady said remained unbroken down to the time she spoke of, 1872, she added that she was the cleanest minded woman that she ever knew. And, how of Mrs. Ovington's estimate of this friend and sister, of whose purity, whose piety, whose words of love and affection and duty to her neighbors and her household Mrs. Ovington had so rich an experience in her watchings and ministrations, her visits in the sickness in her family, whether of herself or her hus-

band—she, Mrs. Ovington, as honest, as open, as clear-minded a woman as ever lived; but Mrs. Ovington has no idea that Elizabeth Tilton is not in all these regards up to all the imaginations of men or poets, of the dignity and elevation of her sex. Ah, what a terrible imputation upon the plaintiff, if he now presents, or if, under his instructions and inspiration, the learned counsel, taking these instructions and inspirations from him, imputes obscenity, vulgarity, as the hidden meaning of the innocent expressions of these letters, which, as I say, show themselves as envoys into the exasperated camp of the husband, and in her answer as delivered to the keeping of the mutual friend.

Now, gentlemen, there is another general proposition to which I wish to call your attention, and which the experience of judges and of lawyers, and, I think, the experience of common life, will show you carries great significance. There is not any evidence that is brought into this case, after I have left the area of what may be called circumstantial evidence, but which comes to nothing; there is not any evidence that comes into the case that does not have its origin, not while either seduction or adultery is going on, but long after both had come to an end, and long after both, if they ever existed, had been discovered. There is not a word, an act, a movement, a construction upon Mr. Beecher's conduct that does not have its origin subsequent to the 29th day of December, 1870. Everything having the first pretense of any such evidence originates on the 30th day of December, and not one word of evidence produced out of the mouths of the witnesses, repeating what they say, came from him, that didn't have its birth after and upon the voluntary, the exacting requirement that Mr. Beecher should be careful not, by any heats of controversy with other people, to impair the security or the honor of Mr. Tilton's family. Confessedly every word that is produced here as coming from Mr. Beecher's mouth has come after and under the benevolent purpose of suppress-

ing the approach of suspicion, or of combination, of a breath against the fame of his wife and children. Nor, in respect of Mr. Moulton, except as brought into being as between one who confides and one in whom he confides, upon their own showing, nothing ever passed from Mr. Beecher to either of them under that confidence that betrays guilt or consciousness of guilt; but much did pass that proceeded warm from his heart, in sympathy for the condition, in love for the afflicted parties, and in an effort to relieve and restore; and all that comes to be the subject of evidence before you comes from the mouths of men who avow that the utterances of Mr. Beecher and the freedom of confidence and of confidants grew out of the demand, the entreaty of Mr. Tilton that his wife, who was the subject—no matter who the subject was, for that we are not now discussing—should be protected, and of Mr. Moulton, that they were bound by their efforts to repair the mischief that had overtaken with such rapid and complete disaster the external circumstances of Mr. Tilton. Now, I deal with their own showing, and that introduction doesn't attract confidence.

Another most extraordinary and universal trait of this evidence is that it all comes, every bit of it, out of the Moulton mansion, and none out from the house of Mr. Tilton—none, I mean, of any extent or measure,—and the only exceptions are of the interviews at Mr. Tilton's house which grew out of arrangements made through Moulton. Now, there in the Moulton house is the hotbed in which this testimony has been raised. You look for facts; you look for conduct to arise in the domestic establishments of the two parties to criminality of this kind, and during the time that the alleged familiarity and the guilty connection subsisted; but, as I have shown you, there is not a particle of proof that does not have its birth after it was all over, does not spring out of confidence, in the interests of the family that was injured, and of co-operation in the friendship that



was proffered by Moulton for the restoration of the broken fortune, and none of it that does not come out of the Moulton household in the person of its head, and of its familiar guest, who there had his lodgings, not often perhaps, but his meals certainly, for, as Mrs. Morse says in one of her letters, in Elizabeth's broken circumstances he could not find at home food sufficient for the nourishment of his brain.

THIRD DAY, JUNE 1, 1875

*If Your Honor please, and Gentlemen of the Jury:*

Before coming to the first movements in the opening drama of this false accusation, I had endeavored to lay before you the situation of the parties as disclosed in their character, in their conduct, and upon the evidence, as preparing you and your judgment for a just estimate of these movements as they shall come to be portrayed before you; and I do not know that I have omitted any incident or trait of particular import in regard to the relations of Mr. Beecher and Mrs. Tilton, and Mr. Tilton and Mr. Beecher and Mrs. Beecher, (for with Moulton there were no relations on the part of Mr. Beecher, or on his part to Mr. Beecher, antecedent to these first movements) except this single item and element of proof which was adduced upon the cross-examination of the witness Bowen. It appears by his testimony, and undisputed, that as an incident or attendant of the actual interviews and intercourse which make the first approaches to this drama—I mean the interviews and intercourse in the middle of December which arose upon the wife's movement of flight from her husband's cruelty, disgraces, and oppressions—it was drawn out that Mr. Beecher referred Mr. Bowen to Mrs. Beecher and to certain letters of Mrs. Tilton that were in her custody.

Now, I do not anticipate at all the scene or the transaction of this attempted separation of Mrs. Tilton from her husband, but I call your attention to the significance of this merely

incidental statement, that Mr. Beecher referred Mr. Bowen to his (Mr. Beecher's) wife, as either the correspondent of Mrs. Tilton regarding these troubles, or the depository of his letters received from Mrs. Tilton. There has been an aspect attempted to be insinuated into this cause that the antecedent relations between Mrs. Tilton and Mr. Beecher were of a nature, consciously on his part, to preclude or discourage any intelligence of his wife on the subject; and yet here you find when Mr. Beecher was cross-examined, whether there were any letters received by him from Mrs. Tilton during the period antecedent to December, 1870, he answered that there were letters that had been searched for and found, and were in the possession of his wife, or of his counsel—found in the possession of his wife, and perhaps now in the possession of his counsel. Well, my learned friends had access, by the methods of the law, to those letters. They had a fund and a field for exploration there which was worth their while, if this husband had imparted to them any facts or any sound opinion of the guilt of his wife; but they drew out no such letters; they sought for no such letters, in any sense that would bind them to their production, and they did not produce them. But it was reserved for Mr. Bowen, their witness, to let you further into the contemporary fact at the time of these occurrences, that Mr. Beecher, in the end of December, referred Mr. Bowen to his wife for her intelligence and her views of the situation as between Mrs. Tilton and her husband, Mr. Tilton, and stated to him that she had letters received from Mrs. Tilton during the antecedent absence of Mrs. Tilton at Marietta. So you have, gentlemen, when you come to the beginning of this movement between the parties, no reason to think, no reason to fear, no reason to suspect, that there had been any consciousness, any concealment, any manœuvering, any change of the ordinary rule of that household, that all the correspondence of Mr. Beecher passed first through his wife's hands.

Now, gentlemen, there are two important matters of dealing, matters of situation, and of feeling growing out of the dealing and situation, which precede the time when the accusation is first made, and Mr. Beecher and Mr. Tilton first meet at its making and at his response to the charge. That occurred on the 30th of December, as we all remember. But there are two matters of fact, important in their bearing, that form a large part of the conscious knowledge of both parties at that meeting, which are presented in directly opposite views by the theory of the plaintiff and by the theory of the defendant, and in regard to which I challenge any answer from the learned and skillful advocate who is to follow me, to the propositions that I shall make.

It is, that in regard to both these preliminary inquiries, the theory of the plaintiff, important, necessary to sustain the subsequent proposition to this theory, is not only utterly refuted by the evidence, but consciously false in his own knowledge, and the first of the series of impositions upon your intelligence and your consciousness that he expected to practice through the forms of law and evidence. These two matters that I refer to are first the actual character and position of the first promulgation, not publicly, but outside the walls of Mr. Tilton's household, of there being domestic discord, and an occasion to appeal for assistance; I mean the situation which is rightly described as the flight of the wife from the home of the husband, and an attempt to receive aid and advice and protection from the cruel circumstances in which she was placed. The second is to the real situation of Mr. Tilton's personal, pecuniary, business fortunes, as they stood at and before the 30th of December.

In regard to the first proposition, about the wife, Mr. Morris in his opening lays down this as the rule and view that they propose. Referring to the letter of January 1, 1871, which they regard as in the nature of a letter of contrition, betraying guilt, Mr. Morris lays down to you and the court these views:

I presume that my learned friend upon the other side will have some explanation—at least I hope so—but I have never been able yet to discover one. But at the time that this letter was written Mr. Tilton's family had not been broken up; he was living with his family, and although his contract with Mr. Bowen was ended, and his loss of the position as editor had taken place, it was entirely without the influence of the defendant, and therefore furnished no cause and no reason for this great grief which was manifested. \* \* \* It is claimed, and has been claimed, that the feeling that produced that letter [that is, Moulton's memorandum of grief on Beecher's part] was brought about by the advice which Mr. Beecher had given Mrs. Tilton to separate from her husband. The point that I wish to call your attention to in this connection is this: that the advice, if ever given at all, was not given until after the 27th of January, 1871, as the documentary evidence that we shall introduce before you will conclusively establish. Especially, you have the strange anomaly of the defendant's mourning over wrongs not yet committed, if they were wrongs; over acts not yet done.

And so Mr. Tilton, on his direct examination, denies that there was anything in the way of separation, and of serious incompatibility of temper or of views of their domestic relations.

*Q.* Mr. Tilton, from the time you were married until your wife left you, as you have stated, about the 8th of July, 1874, was there any separation of home or residence between you other than such as happened by journeys or engagements that took you apart? *A.* No, Sir. Perhaps I should qualify that answer by saying that in the early part of December, 1870, Mrs. Tilton went two or three days to her mother's house, at her mother's request, and came back again. . . . It has since been called a separation. I did not regard it so at the time. I wish to be entirely accurate in my answer.

*Q.* It was a separation in the sense of her being away from the house, and at her mother's, a certain period of time? *A.* Two or three days, I think.

Now, not only in these two direct forms of the counsel's proposition, and of the plaintiff's own testimony, but all through, as an incidental light or an incidental observation was cast upon this preliminary situation, it was wholly to the point and effect that that amounted to nothing, that there was no reality in it, and that the pretense on the part of the defendant that there had been a serious, although perfectly justifiable—an important, though wholly suitable—intervention on the part of Mr. Beecher and his wife in the affairs of Mr. and Mrs. Tilton as between themselves—I say the proposition on our part that there had been, was treated as an afterthought and a subterfuge. In the light of the evidence, gentlemen, what becomes of this view of the plaintiff; and as it was a matter within his own conscious knowledge, as it had produced its rankling effect within his own breast, and had been an urgent motive with him in his conduct during this unhappy period of the end of the year 1870 and the beginning of the year 1871, what becomes of your faith, if the foundations of the cause are thus laid in falsehood, and in conscious falsehood?

Now, the evidence is very plain on Mr. Beecher's part, and he is uncontradicted, and he is supported by Bessie Turner, and finally in the most remarkable way by Mr. Bowen and Mr. Bell, their witnesses. It appears that there came upon Mr. Beecher in the beginning or the middle of the month of December, 1870, as a thunderbolt out of a clear sky, intimation of a terrible condition of injury, of contumely towards the wife, and of profligacy and cruelty on the part of the husband. Is there any doubt about it? Of the principal fact, and of the strange incident within the household that led to it, you can have no doubt. Of the principal fact that Mrs. Tilton deserted her husband's house, resorted to the protection of a mother little in a condition to afford protection either of support or of guidance to this unhappy woman, and that immediately thereupon the resort of Mrs.



Morse, the mother, by and with the concurrence, if not the prompting, of Mrs. Tilton, was to Mr. Beecher, and the girl Bessie Turner was the messenger by which the knowledge was conveyed, and the invitation as well, to the meeting of the unhappy wife and her mother; that thereupon Mr. Beecher went to Mrs. Morse's, and, after a brief interview which filled his heart with anguish, he referred them to his wife as the better person for advice to a wife and a mother, in regard to so unhappy and so sudden a revelation; and that Mr. Beecher and Mrs. Beecher went together; and the interviews passed, the greater part of them in private with Mrs. Beecher, on the part of Mrs. Tilton or of Mrs. Morse; and the deliberation into which Mr. Bell, the deacon of the church, was called; and then a final conclusion, which, by a happy circumstance, came to be preserved, so far as Mr. Beecher's final concurrence or share of it was concerned, in the shape of a slip, which he handed his wife, as you remember, because he was engaged with company, and could not accompany her or talk with her.

Now, Mr. Bowen, coming as a witness for quite other purposes, in the interest of this plaintiff, and talking in the main upon quite other matters, of importance, as we think, in support of our views of this case, shed a flood of light upon this business. As a part of the conversation on the 26th of December, after Bowen had opened to Mr. Beecher the budget of scandals, and reproaches, and complaints against Mr. Tilton which were crowded into his magazine, and which he had already considered and decided upon as involving the necessity of an absolute rupture between him and Tilton, Mr. Beecher introduces the corroboration of certain imputations he had heard, asking Mr. Bowen if he had heard of any difficulties, or of the situation of difficulty in Mr. Tilton's family, to which Mr. Bowen answered that he had not. And then there is disclosed to Mr. Bowen what was immediately recent in occurrence and in memory with Mr. Beecher,

this whole transaction of the flight of the wife from her husband, an appeal to him and Mrs. Beecher, an examination of the case, the result of their views, and the reference to Mrs. Beecher as the person having most knowledge and having had the largest participation in the matter—and she had had.

You will remember in the evidence how there was a long interview between Mrs. Beecher and Mrs. Tilton at the house of Mrs. Morse at which Mr. Beecher was not present; and the views and opinions of this clear-sighted and watchful woman, Mrs. Beecher, were there formed; and when Mr. Bowen went to her, no doubt they were expressed to him. Mr. Bowen had a reluctance to visit Mrs. Beecher, for he seems, in common with Mr. Tilton, to be one of the men that Mrs. Beecher had seen through and discountenanced as visitors at her house for many years; and Mr. Bowen did not look with any great complacency on the interview with Mrs. Beecher, who had seen through him, and made him understand that she saw through him. But Mr. Beecher said, "No hostilities, no unpleasantness or fear of it, need prevent you. Mrs. Beecher will receive you; I will speak to her on the subject." And Mr. Bowen goes and talks it all over; and whether he sees the letters or not that had been received and were in the custody of Mrs. Beecher at that time, I don't know; but he had an opportunity to do so; there was nothing secret about it.

And then Mr. Beecher resorted to Mr. Bell, a deacon of the church, a man of intelligence and of integrity, a man to be resorted to by the pastor, or by any parishioner, in case of difficulties of this kind arising that gave a right to resort to the advice and the guidance of the fellowship of the church. He tells you that Mr. Beecher then laid before him the whole situation and took his advice. We had endeavored to prove it by Mr. Beecher. We desired to prove it. We thought we had a right to prove it. But, the rules of evidence as administered by the learned Court under that division which

permits proof to one side in aid of their views and excludes it from the other side because it is in their favor, a rule of law well founded, excluded it on our part. And when we tried to prove it by Mr. Bell when he was first on the stand the same just application of the same just rule of evidence as it was construed to be applicable by the learned Court excluded that testimony on our part. And, finally, they recalled Mr. Bell, and having found that they had no right to examine him as to one point that apparently they had called him to, they did go into a complete proof, on their examination, which we did not object to, of this entire evidence that they had twice excluded from us, in our earnest efforts to prove it. Now, that advice, that evidence is plain:

He stated to me—that is, Mr. Beecher stated to Mr. Bell—that he had been sent for by Mrs. Tilton to consult in regard to the position of domestic affairs in her own household; that she had left her husband and was then at Mrs. Morse's, her mother's; that she was in great trouble and great anxiety; that the conduct of her husband had been in a great many ways very severe, very cruel, and everything but what (I was going to say) a decent man's conduct ought to be to a woman. He stated that Mr. Tilton's conduct in regard to other matters, in regard to licentiousness, was very low. He stated that he had been called upon by a young girl—he did not mention any name—a young girl who had been in Mr. Tilton's family—and she had related to him circumstances occurring in the family, in the household, by Mr. Tilton, which were exceedingly licentious. He stated—I presume I need not go into the circumstances of the statement; I have sufficiently indicated what it was. He stated that, at last, Mrs. Tilton had been forced to fly from her home; that she had done so, and had gone to Mrs. Morse's; that she had sent, then, for him, to advise with him as to what course she should pursue; that he had consulted Mrs. Beecher on the subject, and that they thought—both thought that it was better that they should mention the fact to some member of the church, so that they might not go into the matter without the whole church (with the whole church, it should be) being

ignorant of this proceeding, or what advice they might give, might tender to Mrs. Tilton.

They had, therefore, called for me, not so much to take my advice as to inform me of the facts that were occurring, and inform me of what advice they proposed to give, if any, to Mrs. Tilton. He asked me then—or said then, that he proposed to hand the matter over to Mrs. Beecher, that it was a matter a lady could manage better than a gentleman, and Mrs. Beecher intended by his suggestion to go and see Mrs. Tilton the next day. The question was particularly as to what advice Mrs. Beecher should give Mrs. Tilton; I don't know whether from Mrs. Beecher or from him, the question came up about a permanent separation—that is, Mr. Bell says, “I don't know whether it was from Mrs. Beecher or from Mr. Beecher,” that the question came up and was presented to Mr. Bell, but from one or the other that suggestion was made, of a permanent separation between Mr. and Mrs. Tilton.—

“And Mr. Beecher asked me what I thought of that. I said, in answer, ‘Of course nothing else can be possible; it is impossible for Mrs. Tilton to live another day with Mr. Tilton on such facts as you have presented to me.’ Then Mr. Beecher asked me if I thought it would be well to call in any of the ladies of the church. I said unquestionably not; it was a matter of great delicacy; it was a matter far more easily managed by a few than by many, and it would be exceedingly harmful to bring it into the church, or even hand it over to any ladies unofficially, and that it was certain that the best management of the case would be to have it left in his own hands and those of Mrs. Beecher.”

Now, gentlemen, you have in the touching narrative of Bessie Turner as to the midnight flight from the house, when this wife goes down in her stocking feet to the door, puts on her shoes there, and at one o'clock at night seeks protection against her husband's treatment, and of her prudence and consideration that she rejected Bessie Turner's wish to go herself with her, and required her to return and retire into her bed with the children, and look after them through the night, and then Bessie's following the next morning and taking the children with her, and then this interview and

then this consultation, you have a direct, and plenary, and indisputable proof of the defendant's proposition of the first movement of complaint being of the wife against the husband, and of that gravity that it disclosed his profligacy and his cruelty, and that it meditated protection permanently, or at least until separation, tried, should have put the wife in her true position before the public and the church, and put the husband under the corrective, it might be hoped, influence of a declared exposure of the wickedness of his household—you can have no doubt of that.

What was Mr. Beecher's written memorandum handed to his wife as the final result of his reflection after his conference with Mrs. Beecher?

I incline to think that your view is right, and that a separation and a settlement of support will be wisest, and that in his present desperate state her presence near him is far more likely to produce hatred than her absence.

Now, did this impress itself upon Mr. Tilton as a grave interference in his affairs? Did he acquiesce in it or did he resent it? Did it rankle in his heart? Did he lay it up as a blow at the integrity of his household and the respectability of the name and fame of his family on the part of Mr. and Mrs. Beecher that was to be resented and punished? Ah, it is said that we use grave words of imputation when we charge conspiracy to defame Mr. Beecher, as if that were a word pregnant with terrible meaning. And it is not a trivial term. Now, let me show you how Mr. Tilton viewed this interference in his family in December upon this appeal of his wife as included in a letter that he brought in the handwriting and with the signature of his wife to Dr. Storrs in December, 1872. It is a letter that will come into view in reference to the first sentence of it, as it has been made the subject of frequent remarks in respect to that part of it. But the sentence immediately following shows whether or



no this separation was a phantom, a figment, an afterthought, a subterfuge, a casual occurrence without significance, for he makes his wife say in this letter to Dr. Storrs—no more her truth or her feeling, or her opinion than the first sentence—but he makes his wife say, after saying:

In July, 1870, prompted by my duty, I informed my husband that H. W. Beecher, my friend and pastor, had solicited me to be a wife to him, together with all this implied. Six months afterward my husband felt impelled by the circumstances of a conspiracy against him in which Mrs. Beecher had taken part, to have an interview with Mr. Beecher.

Now, gentlemen, there you have in writing, in form, that the compelling motive of the interview of December with Mr. Beecher was the conspiracy in which Mrs. Beecher had taken part against him and his family, for I discard all notion that it is anything but new evidence how Mrs. Tilton is made by this husband to express his sentiments at his pleasure. Did Mrs. Tilton think it was a conspiracy on the part of Mr. and Mrs. Beecher against the peace of the Tilton family when she had left her house and resorted to her mother for protection, and sent for Mr. and Mrs. Beecher for their advice and aid? Did she think it a conspiracy of theirs in which she, Mrs. Tilton, was the first mover, the first source and origin of any impression or any knowledge that there was any situation that needed to be taken up and disposed of? No, I have read you at once Mr. Tilton's firm written statement that the interview he held with Mr. Beecher on the 30th of December was impelled by the circumstances of a conspiracy against him in which Mrs. Beecher had taken part; and then in the letter that this same husband, Mr. Tilton, gives to Mr. Moulton in his wife's handwriting, and over his wife's signature, in which she is made to approve and applaud her husband's conduct, she says:

You have risked so much as he has been sacrificed for others ever since the conspiracy began against him two years ago.

And Mr. Tilton in the "True Story" says:

Mrs. Morse once went to a lawyer in Brooklyn and with a plausible air, consulted him about a divorce between my wife and me. It is sufficient to say in reference to my case with Mr. Bowen and Mr. Beecher, and to the case of each against the other, that she (Mrs. Morse) made a careful and malicious use of the few facts in her possession and of the many fancies which these engendered in her diseased and unhappy mind. Mrs. Morse, in plotting her insane mischief, chose a confederate for a brief time in Mrs. H. W. Beecher, another lady of abnormal type, whose peculiarities having less aggravation, are also less pardonable than Mrs. Morse's. For 11 years Mrs. Beecher and I have not been on speaking terms, nor have I ever had so relentless an enemy.

Well, she was a truthful one anyhow. She never received any confidences from him. She never valued anything that would come from his mouth, and she never was deceived by any discrepancy between his face and heart. Mr. Storrs giving the narrative, and an important narrative, and Mr. Storrs was Mr. Tilton's best friend, next best to Moulton—no, standing in equal rank with Moulton—the man he would have gone to as his agent and his confidant, and the manager of his affairs with Bowen and of his interviews with Beecher, on his own statement, if he had only happened to meet him instead of Moulton. Now, I am afraid to trust even that hypothetical view of Mr. Tilton. But if it were so, how unfortunate that Mr. Tilton did not find in the confidence of a friend the intelligence and also the integrity and practical good sense of Mr. Charles Storrs. But Mr. Storrs says on that:

"He rose and said he wanted me to go right round to Frank Moulton's with him."

Now, this was the 2d day of January—the 2d day of January, 1871—right after all these interviews that I am coming to:

*Q.* Did you go?    *A.* I did.

*Q.* With him?    *A.* Yes, Sir.

*Q.* Did you have any conversation on your way there?    *A.* We did.

*Q.* What was it?    *A.* I asked him what the trouble was. Well, he said that Mr. Beecher, Mrs. Beecher, and Mrs. Morse had been talking against him to Mr. Bowen and influencing him against him, and he also said that they had influenced his wife against him.

Now, that was the friend of whom in this very interview he says that "it was mere chance whether I had not taken him instead of Mr. Moulton." And he said, "I want you to go right round and see Mr. Moulton."

They started, and they did see him; and Mr. Storrs tells you a good many other things that occurred that day that explode the whole fabric of the false charge against Mr. Beecher, as you will see when I come to direct your attention to it—explode it then and there on the second day of January, while it was all fresh; put it upon the footing that we say it stands upon both in respect of fact and in respect even of this false charge or erroneous charge on the part of Mr. Tilton. I am now dealing with the plenary proof that this discord in the family, that this flight of the wife, that this appeal to Mr. Beecher, that this intervention of advice and consultation and of responsibility was the moving cause of the hatred, of the reproach, the charge that he made against Mr. Beecher. I have it under his own words, for you do not doubt that these letters that he brought to Dr. Storrs and that he handed to Mr. Moulton from his wife were his letters, approved by him, if not, as I think very plainly, written by him; and as to this statement of Mr. Storrs, I do not need to say anything more on the subject, except to say that when Mr. Tilton is recalled to the stand on rebuttal this entirely new matter that we had introduced from Mr. Storrs of this pregnant consequence that I have read to you

is not contradicted by Mr. Tilton at all. Was it not important? Does not our view exclude his view? Does not our view falsify his view? Does not our view convict him of wilful, purposed contrivance of evidence against the truth to beguile your judgment and mislead your verdict?

Now, immediately on his wife's return, or very soon, there occurs the misfortune of her miscarriage and serious illness. That began on the twenty-fourth of December, and the next movement originated also in the troubles of Mr. Tilton, wholly in the troubles of Mr. Tilton, and wholly in troubles in which Mr. Beecher had nothing whatever to do until they were forced upon Mr. Beecher's attention by what was considered undoubtedly a very bold and a very wise act by Mr. Tilton. On Saturday previously, on the 24th of that month, Mr. Tilton having been deposed from his place as editor of "The Independent," and having received, in lieu of that eminent and permanent position, contracts of employment, contracts which gave Mr. Bowen complete command over the durability and circumstances of terminating the relation *instantly*, that being the situation just established and ostensibly and presumably to be secure for some two or five years, —two years in the case of one paper, and five in the other, —Mr. Oliver Johnson, then a companion in employment on "The Independent," intimates to Mr. Tilton that Mr. Bowen had heard stories, and was considering them, prejudicial to his character, and he had better see Bowen. Mr. Bowen didn't want to see him; Mr. Bowen had not asked an interview with Mr. Tilton; Mr. Bowen had not advised Mr. Johnson that he wanted to see Mr. Tilton, but Mr. Bowen had talked with his managing editor, Mr. Johnson, on the subject of these imputations upon the character of Mr. Tilton and the necessity of terminating his relations with "The Independent," and Mr. Johnson, not in betrayal of confidence, but as a friend of Mr. Tilton, as he was, brought it to the notice of Mr. Tilton and advised him to

see Mr. Bowen and force some open consideration between them of these causes of complaint.

The result of that is that when an attempt had been made at an interview earlier, Christmas, as a day of leisure, was assigned for an interview, and Mr. Tilton attended at Mr. Bowen's house with Mr. Oliver Johnson, and then Mr. Bowen informed Mr. Tilton of the stories against his character which had come to his knowledge. Briefly it is thus, and indisputably thus, whether in the testimony of Mr. Bowen, in the testimony of Mr. Oliver Johnson, or in the testimony of Mr. Tilton himself, that Mr. Bowen had had no suspicions, had received no intimation, had heard no rumors prejudicial to Mr. Tilton prior to the time he had dissolved the connection as editor. And when that was announced in public, when it was seen that this great throne, that this lofty crown, that this powerful sceptre, was no longer in the hands of the king, but that they had all been resigned, and another king that had new views, at any rate not the personal interest in the question that Mr. Tilton would have had, was announced, then the stories came to Mr. Bowen. What are his figures? They came in clouds, they came in an avalanche; they came from near by and they came from afar off—the story from the ante-room of “The Union” office, the story from Winsted, and the story from the Northwest; the story of an intrigue with a woman in fashionable life—everything as Mr. Tilton admits (it is all admitted), came to his knowledge in the sense of imputation or information.

Well, now, I am not talking of the truthfulness of these imputations; I have never gone into them any further than was necessary to show the situation to be such as it was pretended on Mr. Tilton's part it was not, but what manifestly it was, that there had come to be such a knowledge on Mr. Bowen's part of misconduct on the part of Tilton, and such a basis of fact, such a definiteness of name, and place, and



circumstance, as made it, at least, the subject of inquiry, and responsible inquiry, and of necessary action on Mr. Bowen's part. That being so, this movement became an important element in this false accusation, and in all the surroundings of gloom, of malignant calumny, that have attended Mr. Tilton's course toward Mr. Beecher through years.

I have shown you the interference in his family that he stigmatizes as a conspiracy, as proceeding from relentless foes, as being such as to compel him to come into such a controversy as he did come into with Mr. Beecher.

Now, here there are, in regard to this matter, two propositions on the part of this plaintiff which he deems it important that you should accept as proved, and which you should stand upon as the foundation stones for your footing when you come down to consider the interview of the 30th of December. He says that at the time of that interview, first, he was in no disaster, and secondly, that Mr. Beecher had nothing to do with it; that the pretense on Mr. Beecher's part of his having rashly, inconsiderately, uncharitably, taken for granted that the imputations against Mr. Tilton were well-founded, and joined, and aided in, and supported, Mr. Bowen's ill-construction of his conduct, and the severe decisive action in striking, at a blow, character, property, livelihood, family, everything, so that at the end of the week, when this interview was held, the 30th of December, there was no more deplorable condition of what had been a proud, a haughty, a self-confident, a high-headed attitude, demeanor, walk, and conversation in this community, so that he was "lying stripped and bleeding on the sidewalk," to use his own phrase to Sam Wilkeson, a pitiable object, and needing aid from anybody that professed friendship—all this in their case, in their evidence as produced by this plaintiff himself, and by the witness, Moulton, by whom they have attempted to support the plaintiff's evidence

before you, all this notion has no foundation. He was a man of comfortable and assured property; nay, up to the 30th of December he was in possession of contracts which gave him a securer and a better position than that of editor, which gave him \$15,000 a year, as he has attempted to impose upon your understanding—not very successfully on his own testimony to be sure, and we shattered to atoms the whole fabric of that view by the testimony on our part—that it was not until late on the night of the 31st, when the chimes of St. Ann’s were ringing out the old year and ringing in the new year, that the first notion came to him that any moth had corrupted the garment of his pride. It is of the gravest importance to this plaintiff that he should strike out this state of facts as within the consciousness of himself and Mr. Beecher, and as a matter of substance and of fact, at the time of the decisive interview of December 30, 1870.

Well, what are we to say on this subject now? Why, gentlemen, I shall not weary you nor myself by long observation upon the general mass of this evidence on that point, for it is all one way. Now, gentlemen, I asked Mr. Tilton if, after the interview with Bowen on the 27th day of December, he didn’t go to his house, exhibit great distress, and say that he was ruined, and then, by conduct pursued there, indicate the extremity of his disaster and the extremity of his resort for means to fight off the further completion, the hopeless consummation of it. No. As usual, he wants to have a circumstance to fortify his statement, and he says, “I was not ruined”; and through a long direct examination they made it appear that he was worth some \$30,000 or \$35,000, all made up in this way:—Speaking of the beginning of 1871, he says:

I owned a house, in which I lived, No. 174 Livingston Street, which with its library, furniture, and pictures, I suppose was valued at about \$25,000. I owned a piece of property in Llewellyn Park, New Jersey, valued at about \$10,000. I owned a share of “The

New York Tribune," valued I think, at that time, at a little more than \$10,000. I owned a small farm out West, in Iowa, valued at about \$1,500. I owned a piece of land, a little fragment of it, near Prospect Park, in this city, valued at about \$1,000.

Then he gives his mortgages, and then the fact that "The Tribune" stock had been assigned to his father. But counting all that up, it comes to this in the end, that he had a house and furniture, whatever it might be worth, which brought him no income; that he had about \$4,000 on deposit with the firm of Woodruff & Robinson, which was drawing, I suppose, 4 or 5 per cent interest, whatever rate they made up the account at; that he had a fragment of land near Prospect Park, which produced—assessments; a farm in Iowa, which had the usual crop of wild land taxes; and the Llewellyn Park property, which ended in having been got for advertising and having been turned over to his particular friend, Franklin Woodruff, as an additional security for the mortgage of \$7,500 upon his house. Now, there is another friend that sticketh closer—to his property—than a brother. I never saw such a set of friends as the man has about him! Help him! help him! Why, all his property comes to nothing. It amounts to nothing. That is no imputation upon Mr. Tilton, no reproach. The reproach is in the false and shallow attempt to impose upon your understanding that he was a man of income and property; and the attempt ends, as I say, in this Llewellyn Park property, saleable never, sold never, coming to be needed, in the generous estimate of one of his best friends, as a further support to a lien of \$7,500 on his Livingston street house. Any income? Oh, no, no income from anything. The Tribune Stock belonged to his father, and it so remained. No income from anything. And I proved to you, out of his own mouth, I think, that from the 1st of January, 1871, down to the time that he stood before you, with the exception of what he might have picked up in one of his broken

and discredited lecture tours that he took in 1872-3, didn't he? (Addressing Mr. Tracy.)

MR. TRACY: 1871-72.

MR. EVARTS: Only in 1871-72?

MR. TRACY: Yes.

MR. EVARTS: Well, he made some money then in 1871-72 but none in 1872-73, and I proved by him that all the money that he had had and that he had spent was the \$4,000 that was in the hands of Woodruff & Robinson to start with, the \$7,000 that he had got out of Bowen in the manner that you now pretty well understand and will still better understand after I have remarked upon it, the money to pay Bessie Turner's schooling, paid by Mr. Beecher, and the \$5,000 that Mr. Beecher had also contributed to "The Golden Age" in its necessity; excepting that Mr. Moulton, Mr. Franklin Woodruff, Mr. J. P. Robinson, Mr. Mason, and Mr. Southwick had made up a contribution, to the same object to which Mr. Beecher gave \$5,000 in its necessity, of \$12,000, one half of which was consumed, and the other half returned to these munificent donors out of the money that he got from Bowen.

Gentlemen, how do we stand now upon the question whether in the middle of the week of December that closed that year Mr. Tilton had come to an absolute prostration of his affairs, and was convulsively scrambling out of the flood that was overwhelming him, and seizing upon every straw, even upon a woman's hand, careless whether he drowned her with himself, provided he saw the last chances of her feeble aid saving him—what shall we say about that? He carries it, as I say, with a high head through his direct examination. "Nothing!" Why, we had just made the bargains; there was not any trouble; we had talked, to be sure, and he had said, when I had thrown out an intimation that he had better run after Mr. Beecher and let me go—I sent him on that scent, and we had combined in a great

move, that Bowen said would be successful, to drive Beecher from further editing the rival newspaper, "The Christian Union," and that would take effect in twelve hours, and that he and I—Bowen and I—should be masters of the situation, clear of a rival and clear of a hated enemy, an enemy, if an enemy, because we had injured him, an enemy hated, if hated (and I do not doubt that Mr. Beecher was hated by these men), because Mr. Beecher knew that they had injured him.

Now, to be sure, when on the cross-examination—or, indeed, on the direct, but more fully on the cross—it was made to appear that the vigor and success of that war against Mr. Beecher that was commenced on Christmas did not come up to the sounding phrase of the manifesto, and all that had come of it, although what had occurred had not been displayed to you as it now is, for Tilton could not speak of it, and Bowen was not called—what had occurred between Mr. Beecher and Mr. Bowen—when it was proved that on the next day after Mr. Bowen carried this missive that was to hurl Mr. Beecher from his pulpit and from his editorial chair, and to drive him from Brooklyn, when it was given in evidence that all that had happened between the joint actors in that brave act was that the next time they met, which was the next day, Mr. Bowen, with a countenance livid with rage, and with greater excitement than Mr. Tilton supposed it possible for him, or any man perhaps, to exhibit, shook his fist in Mr. Tilton's face and said to him:

If you ever mention that I was an ally, that I was a conspirator, that I ever knew or heard of that letter that you wrote and I carried to Beecher, I will cashier you; I will drive you out of the office; I will call a policeman and turn you into the street.

When that was proved it was pretty evident that Mr. Tilton did not stand on velvet with Mr. Bowen on the 27th



day of December, and that is the last time they ever met, as I understand the testimony of Mr. Tilton.

Now, don't you think, on his own showing, when he went home on that Tuesday, that he did feel he was ruined? Bowen and Johnson had told him that he was going to be turned out unless he arrested the hand. A contrivance, exhausting malice and reaching all prospect of ever being supported by proof and carrying any practical results, had been the only scheme that he could suggest for his temporary salvation. That petard had been fired by this engineer, and who was hoisted by it, Beecher or he, Bowen's interview with him, as testified to by himself, shows you. Now, don't you think that he knew that he was ruined? I am bringing to you the evidence hereafter, but, on his own showing, you know that he was ruined. You know that he knew he was ruined, and you know that he swore that he was not ruined, but was in the proud possession of this long assured career with Mr. Bowen on "The Independent" and "The Brooklyn Union," and the \$15,000 a year. Now, gentlemen, I am not dealing with this witness and this plaintiff on captious criticisms, of which best remembered words or conversations, or obscure and incidental facts are the basis. I am dealing with him upon the very basis of his cause, upon the very basis of our defense, and I show you at every step in it, that he invents, contrives shallow and foolish pretenses that, looked at by themselves, won't stand the penetration and the discomfiture of a truthful interpretation of his own testimony.

But, when you remember the evidence of that excellent, candid, simple, straightforward woman, Mrs. Mitchell, the nurse, and when she tells you what went on in that household during the three days after his accomplished ruin, after he had brought it into the family, up to the time when he had prevailed upon that sick, that feeble, that hysterical woman, standing, upon the evidence, between a swoon

and a gasp, you don't doubt that he was ruined, and he knew he was ruined, and that his resort to Bowen's hatred of Beecher instead of saving him had hopelessly plunged him deeper, and that now he must contrive some approach, some operation upon Henry Ward Beecher that should not attempt to intimidate him, that should not attempt to antagonize him, that should not attempt to affront him, but should come around that great, generous, magnanimous heart of his, which Mr. Tilton has testified made his (pointing to Mr. Beecher) greatness, and distinguished him from all other men. He has told you that the way to get aid, the sympathy, everything in respect of sentiment and effort that one man could do for another out of Mr. Beecher was to make him think that he had done you a wrong, however slight, and that it was in that way that men did impose upon him, and that if they knew him as well as Mr. Tilton did they would impose upon him a great deal more—all that I have laid out in these generalities of testimony which so try the patience—not of you, gentlemen of the jury, for you understand them—but of the all-wise critics of the press that wondered when I was going to prove Mr. Beecher innocent, and let alone these generalities of proof.

It is a generality of proof for Mr. Tilton to disclose to you that the way to get hold of Mr. Beecher is through his heart; that the way to get hold of his heart is through an impression that an injury has been done by him; that men who understand that practice it upon him, and if they knew as much about it as he, Tilton, does, they would practice it a good deal more. Now, that is a generality that covers the whole malicious scheme to work out of the tenderness of heart and the tenderness of conscience of Henry Ward Beecher that moral evidence, as they call it, that he must have done something very wrong because a man of the world, a gambler, a profligate, a Sir Philip Sidney, or Sir Marmaduke would not ruffle a feather unless it was three years' seduction and two years' adultery.

Ah, gentlemen, a sad thing it is for us, in this civilization of ours, if you are to argue the magnitude of an unknown offense by the reach of generous, of solicitous chagrin, regret, remorse, compunction that will flow out even of the woundings of the feelings, much more of a serious interference with the domestic condition and with the external prosperity of one of a family standing in the relations of friendship. I do not know how to express my scorn of this reduction of human nature to coarse and vulgar standards by which the lowest and the coarsest are to impose their nature upon all grades of character, of conduct, which we are striving, by education, by religion, by all the humanities, to raise higher and higher toward heaven. Our system is—and how wonderfully successful it has been—to raise a mortal to the skies; theirs to drag an angel down; and it is under those two opposing forces and estimates of human character, human conduct, and human destiny, that the division takes place before you. Cowper, who besides being the most instructive and religious moral poet of our language, and the sweetest composer of devotional hymns familiar to us all, has the credit of having written the wittiest, the most laughter-moving verses of our tongue also; but, besides John Gilpin, he also had a touch of humor in some other matters, and having occasion to exhibit the pranks that the parishioners practiced upon a tithe-collecting clergyman in England, he concludes the coarse jokes of the farmers and the miserable sufferings of the clergyman in this pithy statement:

Oh, why were farmers made so coarse,  
Or parsons made so fine?  
A kick that would not hurt a horse  
May kill a sound divine.

Now, gentlemen, when they talk of agitation of mind and feeling and compunction, they are dragging you down from an elevated, purified, Christianized frame and fabric

of character and mind and heart, to compare him with the groveling and coarse sentiments and feelings of men without character, without conduct, without aspiration, and without hope in the world; and they who are without hope in the world are without God in the world.

Now, Mrs. Mitchell says that Mr. Tilton was back and forth with Mr. Moulton with his papers, with his interviews with his wife in the sick chamber—for the wife could not leave it—against her remonstrances, against her fears, against her duty, but what could she do against the husband and the husband's friend?—and that the result of all that was, as you know, the procurement of a certain paper on the 29th, which is Thursday, which was used on the 30th, which is Friday. And Bessie Turner tells you the same thing, and the distress was so great that Bessie Turner, seeing it, sank down, as it were, and swooned in the sick room at these terrible demonstrations of Mr. Tilton's lamentings, and bewailed the woe of that family thus openly declared, and Mr. Tilton tells you himself that he told his wife of his troubles, whatever they were, and he told her on the 30th, before the 30th, before the 29th, when he got this accusatory note from her (its contents, its character I shall make so plain to you that you won't really feel you have lost anything by its wilful destruction), that he got from her that note on the 29th as the means of an interview with Mr. Beecher, or to be used in an interview with Mr. Beecher which did take place on the 30th, because she was distressed in mind—at what? That these troubles with Mr. Bowen, and an enhancement or exaggeration of them between Mr. Bowen and Mr. Beecher, would bring into display or action this connected trouble in her house, whatever it was—you have his own telling of it; I am only telling what his confession on his part is—that his troubles, and the dangers, and the difficulties, and the fears and anxieties that surrounded them were the topic of conversation be-

tween himself and his wife, as indeed Mrs. Mitchell has plainly told you; and what does Frank Moulton tell you about it? He thinks he was there once. Not more than once, I think.

MR. SHEARMAN: Twice.

MR. EVARTS: And he doesn't know whether the woman was sick; he could not remember; it made no impression on him; she might have been sick, and, very likely, was sick. Well, now, gentlemen, what do you think of a man's memory that could go into that sick chamber, and see that woman lying on her bed, and all this turmoil (for the nurse says he was in the chamber over and over again)—all this turmoil going on, conferring with Mr. Tilton in his own house and elsewhere, coöperating, suggesting, requiring, demanding, the agency of the wife to be invoked, and tell you coolly that a note, that he had from her desiring the return of this important paper, he cannot remember; thinks she must have given it to him, but whether she did or not, he doesn't know; and he doesn't know whether she was sick or not. Well, gentlemen, there is nothing like command of your faculties; that is a great merit in a man; and as memory is one of the faculties, I suppose it is a good thing to have command of your memory. Memory, Mr. Moulton and such witnesses think, is a very good servant, but a very bad master.

You may remember the delicious wit of one of the conversations in Sheridan's "School for Scandal," where the bright coterie of men and women that never overvalued their neighbors, were commenting upon *Miss Vermilion's* beauty, and *Mrs. Candor* says: "She has a very fresh complexion." "Yes," says *Lady Teazle*, "when it is freshly put on." "Well, but then it must be natural," says *Mrs. Candor*, "for I have seen it come and go." "Yes," says *Lady Teazle*, "come at night and go in the morning." "And, what is more," says *Sir Benjamin*, "her maid can fetch and carry it."



Well, now, gentlemen, the testimony of these witnesses was very fresh when it was freshly put on, and you could see it come and go. Three hundred and five things we wanted to know that Mr. Moulton did not recollect; and I don't think it would be too much to say that you could sometimes almost see Mr. Tilton fetch and carry their memories. Ah! gentlemen, you have been but dull witnesses of these witnesses if you need anybody to explain to you the character and the system of their testimony. Not remember that the woman was sick; not remember whether he got that note from her hands; not remember that he was there once; not remember whether she was in bed, or not; whether she wrote it in bed, nor any of these little items of proof! They didn't know that we had an honest, an intelligent, and a candid witness who told you what she knew and what she remembered, and it fitted with every proof in this case; whereas their testimony is at variance in all these shadowings by which they attempted to detract from the scenes and occurrences of that week; at variance with the whole moral force, with the whole necessary aspect of this situation.

Suffice it, then, gentlemen, to say that on this testimony you know and feel that Mr. Tilton was ruined, and he knew it; that he so acted, and that all his movements with his wife, and toward Mr. Beecher, were governed by that knowledge, and were contrived in order to repair the ruin or build anew the structure after it was hopelessly irreparable.

Now, there is one thing that Mr. Tilton and Mr. Moulton agree about—that during all this preliminary period the only thing in the way of accusation, in the way of imputation, in the way of detraction, in the way of calumny—the only thing that they pretend is that Mr. Tilton had given birth to the charge of improper solicitations. Well, now Mr. Bowen comes in, a witness called by themselves, and says they called him for the purpose of showing that Mr. Beecher didn't take part in the movements, conclusions, decisions and actions

on his part in regard to Mr. Tilton's relations to "The Independent"; I will leave that for the moment. I take him now on his statement that he told Mr. Tilton on the 26th of December, in that Christmas interview that preceded his carrying the note to Mr. Beecher for him, and in Mr. Tilton's name, that he should sever his entire connection with "The Independent," and with the other newspaper, and he gives as a reason why Mr. Beecher didn't influence him toward that decision, that he had completely decided before he saw Mr. Beecher. Well, if you take the story for its own working one way, you must let it work the other also. You have proved by your own witnesses, and not left it for me to argue from Mr. Tilton's own statement, though that would have been enough, what occurred between him and Mr. Bowen on the 27th—you have proved by your own witness that on the 26th of December you knew you were ruined; that the ax was to fall; and when your last despairing effort to charge the attack upon Mr. Beecher and save yourself had failed, as you knew it had when Mr. Bowen shook his fist in your face on the 27th, you knew the ax had fallen—absolutely fallen.

#### RECESS OF THE COURT.

MR. EVARTS: Another element important to be brought into view as bearing upon the conscious knowledge and feeling of Mr. Beecher and of Mr. Tilton when they first came into one another's presence on the 30th, grows out of the real gravity, weight, and substance of these imputations against Mr. Tilton's morality, which had come to Mr. Bowen's knowledge, and were made the occasion of his deliberation, decision, and its announcement to Mr. Tilton. Now, that these topics and incidents included the Winsted affair, and the dealing with a woman in the office of "The Independent" or "The Brooklyn Union," there can be no doubt, upon Mr. Tilton's own testimony. His mode of disposing of them you have heard. He has no difficulty in brushing away,

while it merely depends upon the turn of phrases, either these or any other facts; but the difficulty is that when the facts return, they return not only with the force of proving themselves, but of discrediting him. If he admitted the truth, then the character of the facts would have been all that was to be gathered of import from their evidence; but if he denies them, if he misrepresents them, and they are facts within his own knowledge, then when our duty brings back in a shape not to be contradicted, not capable of being disparaged, these ugly facts that he had swept away by the breath of his mouth, then the facts come back, proving him to have been false, deliberately, consciously false. And how many times have these blows to be given—not to the fabric of the testimony, but to the character—the ingrained character of the witness, and the plaintiff—before they tell to its destruction? Why, gentlemen of the jury, if witnesses are to be believed in their own case, under the operation of the bitterest and the most hateful passions, by their confession, that ever actuated men, they must at least carry a clear tablet for their testimony, and not have it disfigured by obliterations and double texts.

Now, this matter about the charges brought to Bowen's notice, to the prejudice of Tilton, were regarded by Tilton and his counsel as important, if true, and grave, on their bearing upon what became a principal question with them, and has been made a principal question with them, and which I shall consider on its own merits, and that is, as bearing on the question of whether Mr. Bowen owed Mr. Tilton any money for suddenly abrogating the contracts and dismissing him. The contracts provided that at his will he might dismiss him without cause, but then upon a penalty of paying six months' salary, or compensation, which amounted in the aggregate for the two papers to \$7,000. Very well. But if his character was unworthy, his conduct unsuitable to the position of an editor of a religious print, if

his personal credit and conduct were such as to justify, nay, to demand dismissal, why then Bowen was discharged by law, in conscience, from any responsibility whatever for the sudden and summary termination of the relation. And that *was* the situation. Bowen understood it so. Bowen never departed from that position until, under certain influences which attended the final arbitration and the "Tripartite Agreement," he surrendered that position and closed at once the pecuniary and the other controversies in which he had become involved.

Well, we have, then, as a sample of these stories, thus to be tested whether there was solidity in them, this Winsted affair, which I shall spend a few moments upon. But in it you have not only evidence of the gravity of the imputations, but you have evidence of the lightness with which Mr. Tilton's oath deals with such questions. It was charged that in public rumor, public fame, at Winsted, Mr. Tilton's conduct with a lady there on the occasion of his delivering his lecture, had been unseemly, immoral, and profligate. Very well. Now, he does not prove that it was; that I will agree; but the rumor was of that kind. Mr. Tilton knew everything that had occurred. What did he do about it? Nothing in it; a mere child—a sick child at that—put upon him by his wife because she could not go, and this girl would like to go, and that it was a shameful, scurrilous calumny against him and against her, and had no real foundation. Well, it occurred toward the end, I think, of December, 1869, and it had been sharp enough in its impression to occasion the writing of a letter of inquiry to him while it was fresh, and he had written an answer, and that answer we have, and that answer was written, I think, on the 9th or 10th, or 8th, of January, 1870. There had been a casual misdating of it, you will remember—"1869," by that common error by which, at the first of January of a new year, we are very apt to put the date of the old year. Well, that

helped him a little while. He said that in 1870 this Winsted affair, the knowledge of which had been thus brought to Mr. Bowen's attention, was an old affair; it had happened years before; there was nothing in it; a little school girl, young.

Well, when I got hold of this letter, that "1869," you know, helped him a little. If this was written January, 1869, then it would have been December, 1868, that it happened; but I probed the matter and got from him, finally, by reference to the memoranda of engagements, I having the means always of holding him to the truth, that that letter of his was written on the 8th of January, 1870, and within two or three weeks after the transaction occurred; and in that letter he represents this little bit of a girl as shockingly disproportionate in size to the magnitude of the scandal and that if there had been anything observed, it must have been an intrusion; disgraceful to anybody that was witness to any such fact.

Well, if Mr. Tilton had told the story as it was, or reasonably so, there would have been no occasion for our going into it as a matter of fact. Its only importance to us was as an element, substantial in its character, in Mr. Bowen's judgment, and his action, and as showing that Bowen had solid grounds for his opinions, and, in his opinion at least, for the course he took with Mr. Tilton, and if so, that he did not owe him the \$7,000, and that as to its being an honest debt, payable, demandable on its own merits, and finally collected on its own merits, there was nothing in that idea; that it was got by that outside pressure which may not be blackmail, but which is utterly disreputable, utterly contemptible, and which the judgment of this community, in its length and its breadth—I mean not merely of these great cities but of this whole great country of ours—pronounces at once as the vilest mode of extorting money, from the fears of reputable people against public defamation; and the less there is of fact and truth in the supposed charges, the more sensitive is the unsullied repute against this public detraction. And it was not



desirable that Mr. Tilton and Mr. Moulton should have it proved against them that they extracted and coerced the payment of money from Bowen under the threat, "unless you pay I publish these scandals," and therefore they desired to make it appear that Bowen had no defense, and he knew he had no defense, and had always admitted he had no defense. Well, they made very little progress in that, for Tilton and Moulton both stated to you that Bowen said he didn't owe anything. Now, we are obliged to go into this matter of the Winsted affair, disagreeable to all, and how does it turn out? Why, that this lady was of the age of some 17 or 18.

MR. TRACY: Twenty-two.

MR. EVARTS: Twenty-two years, weighed 150 pounds or so, people took her for 27 or 28, twice as large as Mrs. Tilton, it was stated; and so the idea of the little sick school-girl that could not support the scandal, and that it must break down therefore of its own weight, wholly disappears. Well, now, gentlemen, didn't he know about that? And yet the letter he wrote to Hastings, and the story he told, was a very different matter from this; and then the disclosure of the innocent—if they be innocent—relations that he held to this young woman in the privacy of the room is such as may make no impression on your mind, perhaps, of impropriety; and the shamelessness with which he disclosed it, and takes virtue to himself for his want of sensitiveness on its impropriety, may make no impression upon you; but I think this plaintiff and this cause would give all the evidence that they have given before you in five months, if they could show a journey between Mr. Beecher and Mrs. Tilton up to Winsted, and the occupation of one room, reading Milton, and lying on the same bed, in half undress, and so repeatedly seen and disclosed and exposed by witnesses, that no man can question either the intelligence, the integrity, or the candor of. They are no parties to this litigation. They are sensible, respect-

able business men of Winsted, and you do not sympathize with cross-examinations that bring out no disreputable facts, but are disreputable questions when there is no fact to justify them. You would not like it if you went to Winsted or to Boston, to have inquiries of injurious imputation that jurymen expect to harbor on the idea that there had been something of that kind, or counsel would not ask the question. No; jurymen do not sympathize with that mode of disparaging witnesses, that puts the depreciation in the question and misses it in the answer. Now, there is nothing in it, perhaps, and I have not the least desire, either directly or indirectly, to carry any imputation of a serious character in regard to this young person, but I do put it to you that the circumstances justified the rumor, justified the discredit of Mr. Tilton, and that his oaths on the subject show him to be unworthy of credit in any matter that he chooses to put his own interpretation and his own evidence upon.

Now we come to the Bowen and Beecher interview, so far as I have not already disposed of it, in its relevancy and application to the principal issue here, and which I now ask some little attention to. Mr. Beecher is the sole witness to that interview, up to the point of the introduction of the rebuttal evidence of the plaintiff, which brings Mr. Bowen on the stand. Now, see the attitude in which Mr. Tilton places himself in regard to that missive, and see the judgment that he exposes himself to, when the only conclusion in regard to Mr. Beecher, to affect him, is not the sending or the forging of the weapon, but the manner in which he receives it. Tilton tells you that Mr. Bowen was running on with this tirade against him, somehow or other it became appropriate for himself to introduce an insinuation or an accusation against Mr. Beecher in respect to his own, Mr. Tilton's family, and that that accusation was not in the least discreditable to his wife, or his children's fame, but an accusation against Mr. Beecher, to wit: that Mr. Beecher had

made improper advances or improper proposals to his (Mr. Tilton's) wife; that thereupon Mr. Bowen, either then giving, or before that having given the catalogue of Mr. Beecher's profligacy, from Indianapolis down, the terror and the danger he was to all the people of Brooklyn, Mr. Tilton's quite moderate suggestion that he had been guilty of these improper advances, immediately eclipsed, in Bowen's mind, all this horrible scheme and system of profligacy that he had been enlarging upon; Bowen thought, no doubt, to himself: "Now, here is something that looks as if there was something to it. I have been dealing in this cloudy calumny and nobody has heeded what I said: but, really, now, this young man—he has got something that is not too incredible, and that as he gives his own wife as the object, to be sure, saving her innocence, his credit, and the fame of his children—really now there is something. It is your duty, Mr. Tilton, to arrest this long career of profligacy, to stem this tide of adultery, to restrict this wide-spreading seduction. You have got a fact. Use it."

"Well, but Mr. Bowen, you have been talking about facts that were a thousand times as great as this little fact of mine. Why don't you use some of your facts?" "Oh, a sense of honor restrains me. Mr. Beecher and I have come to a settlement, and all things are ended between us." Why hadn't he thought of that sense of honor before he told Mr. Tilton of those infamous aspersions of Mr. Beecher? I think his sense of honor comes and goes, and you can see people fetch and carry it. But anyhow, he did, and that was enough for Tilton, because Tilton saw the point of honor at once. At once Bowen recoiled. "I will not ask you to be guilty of a breach of honor; far be it from me." "How shall we arrange it then?" "Why, you open the matter by this insinuation about your wife, and that will open the question of Beecher's moral character in general, and then I shall be relieved upon the point of honor, and

will back you up." Well, now, was there ever a more fitly adjusted contrivance between "two men of honor" to maintain their honor? And yet, when they tell you their own story of it, they wonder that people didn't think it as honorable as it seemed to them. "Now," says Bowen, "You write a letter, an open letter, and I will carry it;" and, as Tilton says, it was their joint act—their joint act. Said I to Mr. Tilton, "What was your object? What did you expect to accomplish?" "I expected," said he—"My object was, to strike him to the heart! I expected to accomplish his expulsion from his church and from Brooklyn within twelve hours." Bowen said, "He can't stay twelve hours under that letter." "Put in," says Bowen, "nothing definite; but put in:—*for reasons explicitly known to him*;" and they altered the draft and put that in—an appeal to Mr. Beecher's consciousness, hoping that when he saw "Theodore Tilton" signed to that, he would pack up his trunk and go.

Well, we are coming nearer to the proceedings of the Ku-Klux than we ever expected to be in these civilized communities. "Put in," says Bowen, "*leave your pulpit, quit the editing of The Christian Union*." "Well, no," says Tilton, "we have got enough in." Now, Bowen did not think there was enough in, provided Beecher was not driven out of the rival newspaper; but still, I suppose he concluded that if he left Plymouth Church, and left Brooklyn, probably he would not continue to edit "The Christian Union." Well, now, the missive is forged; now the messenger is charged; and now Bowen, if he has not got Beecher, has got Tilton—got him, *got him*—body and soul. He has got, under his signature, a bold, defiant, blackmail letter against Mr. Beecher; and, although the space between Bowen's house and Beecher's house is not very long, yet there was time enough to lead Bowen to reflect that perhaps it would be as well to seal up that letter and not carry it open; and he did so. We got that much of truth, at least, out of

Bowen's lips and from his tongue, the moisture that closed that letter. That is plain; there is no denying that. Well, Bowen goes there and hands it to Beecher. Beecher opened it, and read it, and he did not fall down dead, but, on his own view of it, turned to Bowen and said, "Why, this is sheer insanity; the man is crazy." That was enough for Bowen. He knew that that appeal, "for reasons explicitly known to yourself," did not carry any consciousness to Mr. Beecher, and that what Tilton had told him had disappeared like the baseless fabric of a vision; and then he felt, "I had Tilton before; now, I have got him with the evidence that his charge is false; for I have delivered it to the man against whom it came as suddenly as a stroke of lightning; I know he was unprepared, I know now that this was an arrogant, a grave, a deliberate challenge to him, which, if the reasons 'explicitly known to himself' that were suggested by Tilton to me had existed, would have immediately brought some confusion to the face, some tremor to the lips, some perplexity to the understanding." And is it not so?

If you, or *you*, sir, knew that you had been living in adultery for sixteen months with Theodore Tilton's wife, and somebody suddenly brought you a letter written and signed by the husband, appealing to your consciousness of some relation to him that should suggest and justify that demand, don't you think it would make some impression on you? All the evidence shows, and it is a part of the plaintiff's case, that no intimation whatever, proceeding from Mrs. Tilton, or proceeding from Mr. Tilton, had ever brought to Mr. Beecher's knowledge the fact that this terrible guilt, prolonged, persistent, inexplicable, had become known to the injured husband; and Bowen who had been only that very day unrolling to Tilton the enormity of Beecher's profligacy and the Christian duty of arresting it, and had seized upon Tilton's suggestion that he at least had an effort to be profligate to charge against Beecher—seized it and carried it



there, looked at Mr. Beecher as he read the letter, heard his answer, and at once concluded: "Whatever Mrs. Tilton may have said to Mr. Tilton, whatever jealousy may have invented, or hatred magnified in Tilton's breast, there is nothing in Beecher's consciousness that makes the color come or go in his open countenance, that is coursed as immediately by every tell-tale flow of blood as a young maiden's in the flush of health." Ah! Mr. Bowen had not lived in vain. He knows something about false charges; he has seen the ways of this wicked world; and he saw that instead of that charge relieving him of the rivalry of "The Christian Union" or crushing the antagonism of Beecher to him or to Tilton, all that had happened was that Beecher was in possession of this conclusive proof of Mr. Tilton's enmity and malignity. Ah! Bowen must have rubbed the hands of his understanding and chuckled over his forethought in having closed that letter; for if it had remained unclosed, Mr. Beecher would have had the same evidence against him, Bowen, that he had against Tilton.

Now, Bowen says that Mr. Beecher treated it, so far as any spontaneous expression of his, Beecher's, own went, even more contemptuously than by this statement which he made that the man was crazy. Bowen says that he put it into his pocket, and did not show anything at all, and that Bowen then said to him, "Well, what do you think about that letter?" and then Mr. Beecher said, "Why, this is sheer insanity; the man is crazy." I think Mr. Bowen does his sagacity an injustice. I think the same wit that closed the letter with his mouth would not open it also with his mouth, or show any interest in it, or that he was a messenger that was expected to bring an answer; and I think Mr. Beecher's statement, therefore, is more conformable to the probabilities and to the character of Bowen.

Now, gentlemen, these little differences in the memory of witnesses come to nothing. The real question was, when you

had heard from Mr. Beecher that narrative, when Mr. Bowen comes, brought in here to speak to the same interview—the real question was, and you watched for it, and we on our side watched for it—whether he should put a different complexion upon the transaction, whether he should show confusion on Mr. Beecher's part, tremor, solicitude, anxiety, entreaty; and he did not. He said Mr. Beecher treated it with contempt, showed no solicitude. Bowen does not remember that he said to Mr. Beecher when Mr. Beecher said this spontaneously, "Oh, I don't know anything about the letter; I only brought it here."

Ah! but gentlemen, that was the very attitude he had prepared for himself by closing the letter, that very attitude to be able to say, I don't know anything about the letter. That is all he had done it for; and rely upon it, he preserved that advantage after he had seen the way the lion received the insult of a less noble animal. You may rely upon it that Bowen, who meant to keep out of the reach of the lion's paw, and not to have his precious head crushed between the lion's jaws, didn't think it worth his while to thrust it in when he saw that he had kept it out, and that the lion was by no means tame.

Ah! Mr. Bowen! Mr. Bowen! Men must be judged by their character; and whatever uncertainties there may be about yours, they do not touch your calculations about your safety and advantage, that you displayed hereby your caution in not carrying an open letter. Then Mr. Beecher, according to Mr. Bowen, as would be very natural—Bowen does not say he told him he knew what was in the letter, or had any suspicion of it, or was any party to it, but he thought he had to move Mr. Beecher to talk about that letter. Well, he admits that Mr. Beecher said to him on that motion of his the same thing that Mr. Beecher testifies that he said spontaneously; that they agree about. But then, Mr. Beecher said, according to Mr. Bowen (and here there does not seem

to be any very particular difference)—Mr. Beecher said, “Well, sir, do you come here as a friend, or how do you come?” Did that look as if Mr. Beecher cared how he came? But he wanted to know how he came. “Oh!” says Bowen, “as a friend; oh, as a friend, by all means!” Now, if Mr. Beecher could have heard the conversation between Tilton and Bowen about an hour before, that took place in Bowen’s parlor, what would he have thought of Bowen? You have heard them both. Well, the trouble about this conference at which only two are present, and both of the same way of thinking, is, that when you have too many of them, and you are the constant party, with changing partners, and you profess to be of the same way of thinking all the while with each partner that you are with, when you get them together, that is the trouble. Ah! that is the nitroglycerine that blows up the whole concern. Innocent, harmless acids and alkalies, oils and powders, if you will only keep them apart; but if you get them together they do play the mischief with the best laid foundations and the most *honorable* characters.

Only think of it. Bowen, that with Tilton an hour before had been so sensitive to his own, Bowen’s honor, that he could not suggest anything, move anything, towards arraigning Mr. Beecher, but said that Tilton might and he would back him up, and they together would drive Beecher out in twelve hours; he beards the lion in his den and the lion says to him, “Sir, how do you come here? Do you come as my friend?” “Oh, certainly, certainly;” and while he was not willing to admit, as Mr. Beecher had stated, that he grew more and more friendly all through the interview, yet he admits that it began friendly, ended friendly, continued friendly, and the only reason it didn’t grow was that it was without variation or shadow of turning.

Well, what a pity it is, at several times during the long, tortuous course of these slimy calumnies, these contemptible

hatreds, that you could not have got three or four of these people together, and had them put their interviews together. That is the miscalculation about the resources of the Divine provision for the administration of justice among men, forming a part of the moral government of the world. These two conspirators, Moulton and Tilton, Bowen and Tilton, when they are together, think that no eye overlooks their machinations and no ear overhears their plottings; as if human justice and the moral government of the world had no other power of overseeing and of overhearing than penetrating the particular privacy in which they are dealing. Shallow, ignorant, foolish calculations thus rebuked by the great prophet and poet of the Hebrews, "Ye fools, when will ye be wise? He that planted the ear, shall he not hear? He that formed the eye, shall he not see?"

Here, in this little juxtaposition of these two interviews—within an hour of each other—between Tilton and Bowen, and Bowen and Beecher, the resources, easy resources of that justice which is but a part of the moral government of the world, shows you that men can be overheard, and their privacy can be penetrated by the sight, when they think they are alone. Now, if nothing had happened to Beecher from the transaction of the 26th of December, a good deal had happened to Bowen and a good deal to Tilton. Bowen saw the necessity of his rapid retreat from his companionship with Tilton, and he left no doubt in Tilton's mind of what the result of the interview between Bowen and Beecher was, nor of what his, Tilton's, fate at Bowen's hands was to be. We have a very graphic description of it by Mr. Tilton, and Mr. Bowen was not called upon to contradict it by our learned friends.

Now, the staple of the further conversation between Bowen and Beecher was this:—Bowen was slow to remember it, but it all came. There is not a word wanting in his cross-examination and direct examination together to corroborate

and sustain every word of Mr. Beecher's testimony in regard to that interview; and I call upon you to notice it, not merely because it gives an absolute confirmation of the spirit and character of the interview, but because it corroborates the strength and accuracy of Mr. Beecher's memory.

Mr. Beecher has displayed to you the conversation about Mr. Tilton's profligacy, or the rumors of it, as they had come to Bowen, that he had heard nothing of them—Bowen hadn't—until after he had deposed Tilton from the editorship of "The Independent"; that then they came in, came like an avalanche, came from here and there, from the West and from the North, and that they were horrible; and then that he, Mr. Beecher, said, "Well, I have heard about Mr. Tilton myself," and within a very short time, Bowen says Beecher asked him if he knew anything about any troubles in Mr. Tilton's family. "No," says Bowen, "no; I have heard nothing of *any consequence* about any troubles in his family." Well, I am sure I don't know that he had. I have nothing but Mr. Tilton's word for it that he told him anything against Mr. Beecher in their conversation. Mr. Bowen, on a further direct examination by his own side of the case, the side that called him, is made to answer that at the time of the signing of the "Tripartite Agreement" he had never heard of any imputations against Mr. Beecher in respect to Mr. Tilton's family. That is in 1872. He says that he never had heard that Mr. Tilton had made any charges against Mr. Beecher. They had an object in asking that question, and he favored that object by his answer; but the difficulty is that when you get an answer into a case you cannot get it out, and it is competent for both sides to comment upon it. Now, then, Mr. Beecher proceeded to tell him about the flight of Mrs. Tilton from her husband's roof; the resort to her mother, Mrs. Morse, their joint resort to him and Mrs. Beecher, and the advice and the grounds of the application, and of the flight of the wife, the Bessie



Turner matter, other intrigues with ladies of more distinction and credit, and Mr. Beecher concurred in the opinion of Mr. Bowen that it would not do to have Mr. Tilton at all connected with "The Independent."

Now the point about Mr. Bowen is that he had really made up his mind the day before, and so all these statements of Mr. Beecher, which he admits were made to him, concurred in that view, tended to that result, really produced no impression upon him, because his mind, self-poised, had already determined it. But he agreed on a question I put him that there was nothing in what Mr. Beecher said that tended to unsettle his decision, and he had said, too, that although he had substantially made up his mind, and had substantially informed Mr. Tilton on the 26th of December that he was going to discharge him, yet he had not absolutely. And then, in the next column he said that he had, absolutely, and so you have those insensible vibrations of a great mind between absolute and semi-absolute determination. Why, the touch of a child will rock a great bowlder that is poised in that way, and I should think that what Mr. Beecher said might tend to the absolute, and dispose of the semi-absolute determination. Well, gentlemen, you all understand that interview. It was of the kind that Mr. Beecher states, and Mr. Bowen absolutely confirms it. We have got into a curious question of where the conversation took place, and which is right about that, an unimportant consideration, as there is an entire agreement that the nature of the interview was that Mr. Beecher did not care that (snapping his fingers) for the missive, and showed it. Mr. Bowen cared everything for having it appear that he had nothing to do with the missive, and Mr. Bowen was friendly, and friendly, and friendly, and glad to find that if he had not succeeded in triumphing over Mr. Beecher, he had at least successfully concealed from him the deadly enmity and hatred that he felt for him, and he came back rubbing

his hands again, figuratively, to Mr. Eggleston who was waiting for him, and said, "Mr. Beecher is delighted that Mr. Tilton is discharged"—*is*, in the present tense. "And he is your friend, and my friend, and he has told me stories about Tilton"—"horrible stories," Eggleston says—"and our compact and our amity is complete."

Well, gentlemen, I don't know whether Tilton has misrepresented Bowen in that previous interview between himself and Mr. Bowen, or not, and I don't know that we ever shall know, for by the very terms of the proposition it is only the statements of the two about each other that we shall ever get at. Mr. Tilton's statement of the interview stands as the truth in this cause. It is uncontradicted and furnishes, so far as that enters into the estimate of the feelings and relations of Mr. Tilton and Mr. Beecher, and Mr. Tilton and Mr. Bowen, and Mr. Beecher, the evidence on the subject—I mean of these calumnies against Mr. Beecher, the animosity of Mr. Bowen, and the subjugation by the strong mind of Bowen of the weaker character, Tilton, to his, Bowen's objects. Mr. Bowen contradicts distinctly Mr. Tilton on the question of his discharge as then determined upon, and then communicated, and he contradicts him further by saying to you that on the morning of Saturday of that week, he informed him of his then present and actual discharge.

Now, gentlemen, I have occasion to ask your attention to the vast value of these two facts—by the evidence of the plaintiff out of his own mouth, out of other witnesses, so far as they could show collateral support to it—these two propositions of there being this action of the wife contemplating separation, resort to the pastor, this dealing by the pastor with it, openly, clearly, decisively, and this second point of the dealing between Mr. Beecher and Mr. Bowen whereby Mr. Beecher espoused the view which Mr. Bowen communicated about Tilton's character, and the necessary action of Mr. Bowen in regard to it, corroborated, assisted,

conformed, secured, and aided by his disclosures of this conjugal discord and of this personal profligacy with Bessie Turner and with others.

Gentlemen, you are full grown men. Some people think that if they come into a jury-box they are to lose all their common sense, all the elasticity of their understanding, all their personal knowledge and views of human nature and of human conduct, and take up a dry and formal following of testimony as it may be long drawn out before them. Why, gentlemen, you are here because you are practical men, because you know something of our common nature, because you come from the bosom of the very society in which these parties moved, and in which their action is taken, and by which it is to be judged. All the number of witnesses that would prove to you that the moon was made of green cheese would not justify you in bringing in a verdict that it was made of green cheese, not in the least. It would justify you in bringing in a verdict that the witnesses were made of green cheese.

Now, I ask you this—do you believe that there could be a relation of paramour and mistress between a man eminent in society and a woman the wife of a man prominent in society, and moving in the circles of social intercourse, of religious association, of public notice, that belonged to these people and these their respective families—do you believe that that relation between paramour and mistress could have continued for eighteen months, and then, by chance—much more if by confession or communication from the wife—come to the knowledge of the husband and then, everything being lovely and quiet between them, so that there was no outbreak there—do you think the wife and mistress would have left the paramour six months unadvised that somebody else knew of it, that that somebody was the husband, and that husband the hater on independent grounds of the paramour? Do you think so? Did you ever hear anything like that,

that would lead a woman that had that degree of affection and submission to a man, that she would not warn him against the unguarded course of his life toward this family, that would expose him to the observation, to the condemnation, to the resentment of the husband? That would be a new chapter in human character, and I think if it could be understood as a natural and probable sequel of these illicit relations, and of their discovery, that it might tend to discourage the ventures that men make in that direction. No, gentlemen, common sense discards that.

Well, if a wife, conscious of this final, deepest guilt of a woman as toward her husband—conscious of the long course of seduction concealed from him, and of the long pollution of the marriage bed and contamination of the offspring by a stain, had confessed and found a forgiving husband ready to conceal, unwilling to resent against the injurer—do you think that that wife, with that knowledge of her own conduct and of her husband's privity to it, will be the first to pick a quarrel, and desert the shelter of that roof? What roof could be so hospitable to her guilt as that? What shelter against discovery, against publicity, against ruin so safe as that? What could break the tacit or the actual compact of immunity, of secrecy, of restored and continued love on the part of the husband to the fallen and penitent wife so necessarily, so absolutely, as the wife's desertion of the home and accusation of the husband of profligacy?

Well, gentlemen, if you can imagine that a wife so situated, so sensitive, so morbid on the question of secrecy, could rush out of that house, and accuse her husband when he knew of her profligacy, you must have some strange views of human nature, and if we can not try these people as human beings we cannot try them at all. But, do you think she would go to the paramour and the pastor, and if she did, do you think he would turn her over to his wife, and his wife *this* woman (turning to Mrs. Beecher), this matron who

makes the name of matron all the more noble that she is so conspicuous in its roll of honor, this woman that saw enough into the eyes of Theodore Tilton eleven years before to banish him from her house, and enough into the eyes of Henry C. Bowen to keep him from crossing her threshold? Do you think that Henry Ward Beecher would turn over his mistress to his wife for her to examine, with all the power that a woman knows to apply to a false woman? Now, you may think that is natural, and you may think it is safe, and you may think that out of these two women being shut up, Mrs. Beecher and Mrs. Tilton, there came nothing but advice to quit the husband, brave him, to sustain her purity. You may think so. I would not like to have any client of mine convicted of any crime like this, but I assure you, gentlemen, if he has to be convicted I would like to have him convicted on evidence like this, for the evidence answers the conviction and convicts the tribunal that condemns.

Look, now, at the enormous value of the dealing which Mr. Beecher exhibited to the Bowen missile, proceeding from the bow and the skillful archery of Mr. Tilton. Take Bowen's statement; was there ever greater unconcern, was there ever greater indifference, ever stronger, more definite braving of it than Mr. Beecher's treatment of the missive and his treatment of the man? Was there any yielding? Was there any entreaty of Mr. Bowen? No. All Mr. Beecher wanted to know was, "Whether you came here, Mr. Bowen, coupled with, conscious of, in complicity with this insane, mad contumely of Mr. Tilton?" If Mr. Bowen had said, "I did; I suggested it, I urged it, I am going to back it up," then Mr. Beecher would have faced them both, and he has faced them both ever since. But neither Bowen nor Tilton has faced him. I can imagine no possible construction of human conduct that would treat this charge, this demand, under Mr. Tilton's own signature, as Mr. Beecher treated it, if there had been the least consciousness of those guilty



relations. What did he do? He talked with Mr. Bowen as long as Mr. Bowen chose to talk, and then Mr. Bowen went about his business, and Mr. Beecher never troubled himself in the least, never sought Mr. Tilton, never sent a friend to see him, never thought of the subject further, and waited to see what anybody would have to say or to do about it. Well, gentlemen, we might, I think, consider all attempts to convict Mr. Beecher of this crime, upon moral evidence, as substantially ended by these penetrating thrusts into his very soul that this evidence has given to him, and you read on its unruffled mirror the placidity of innocence which forbids you to imagine guilt.

Are you to take an alternative proposition, that he is an old offender, full of wickedness? Well, there you run against a thousand improbabilities, not to say impossibilities. You run against what, even in the case of a single instance of guilt, is really a moral impossibility. Is there nothing, then, in the wisdom of the Great Master that when you are judging of moral character you are to judge by the conduct of the life? Is there nothing in the proposition that men do not gather grapes of thorns, and figs of thistles? Do you plant thistles to raise figs, and thorns to expect a vintage from? What greater vintage of Christian beneficence and activity has ever been poured out into the wine-vats of a nation than the life of Henry Ward Beecher has furnished? And, yet, all these grapes are gathered from this thorn tree, and are gathered still. If, under this fig tree, men could not repose, what beneficent shelter has ever been reared in the human character and human conduct for the confidence and the safety of one's fellow men? And, yet, this is but a prickly thistle bush that everybody that ever approached must have been wounded by, and yet nobody has found it out. This long course of wickedness has run in a parallel stream through his life, and divided it between its muddy waters and its crystal flow, so that those who stood on either

bank proclaimed it vile or healthful as they happened to be on one bank or the other. Why, gentlemen, if you will not take philosophy, and the great teachings of the Scriptures, on these subjects, let us understand, as we all do, that the generosity of character, openness of nature, warmth of heart, universal sympathy by which every child is his friend, by which every woman reveres him, every man confides in him, is inconsistent with the course of profligacy that hardens the heart. Who knew better than Burns, the poet,—an authority on misfortune—as a man in respect of his morality, who set aside all former teachings and says to the youth whom he would guide through life:

A sacred, pure, and well-placed love,  
Luxuriantly indulge it;  
But ever scorn the illicit rôle,  
Tho' naething should divulge it.

I waive the quantum of the sin,  
The hazard of concealing;  
But, oh, it hardens a' within,  
And petrifies the feeling.

And yet a warm and generous fountain of beneficent acts and sympathetic nature, as Mr. Tilton describes it, that was thrown open to the imposition of ill design, and accessible to the appeals of friendship, remains the uncontaminated and the unhardened nature of this defendant. So now, so always in your opinion, in the opinion of everybody that ever knew him or saw him; and all these monstrous absurdities that defy the faith in man and the faith in God that holds the world together, you are to establish in order to save the credit of the oaths of a few witnesses.

I come now, gentlemen, to the first meeting of the injured husband and the adulterer after the alleged discovery of the guilt. Six months after an alleged communication of some kind prejudicial to Mr. Beecher's relation to Mrs.

Tilton and to the honor of his intercourse with Mr. Tilton's family, these two men are brought together; and I think, gentlemen, that you will in advance agree with me that this interview carries more importance in its real occurrences, if you can get at them, than any other interviews. If there was any accusation made at all, it was made then, and what was made then was the accusation that existed, either in imagination or had been produced by invention, or had any basis of mistake or any solid support of truth. Whichever your theory may be on which you finally rest, whatever the accusation was, or was to be, as an honest accusation it was then and there made. Whatever of confessions, whatever of concession, whatever of acquiescence on the part of the accused ever took place, took place then and there, and there was the period, then and there was the situation, then and there the aspects of the matter all around, that, if you can get at the truth, will be worth more to you than any long-drawn party-colored piece-meal aspects, and intercourse of the years afterward. Now, about that I don't think there will be any dispute.

What had Mr. Tilton done on his own showing in respect to that proposed interview before it occurred? He had got from his wife as he says, and as apparently is true, a paper written in her own hand, of some character and purport—that is admitted. He had got it by efforts in that sick room, persisted in day after day, against the remonstrances of the nurse, and that paper he obtained on the 29th, on Thursday, and kept it unshown, he says, to anybody till the night of the 30th. Now, what would you give to have that paper? It has been destroyed. Who destroyed it? Theodore Tilton. Who gave it to him to destroy? Francis D. Moulton. When? They both swear, not giving day and month and year, but with relation to another event, "Immediately after the 'Tripartite Agreement.'" What justification was there for Francis D. Moulton "immediately after the 'Trip-

artite Agreement' " to give to Theodore Tilton that paper to destroy? Ah! gentlemen, they all swear, all these people, that there was not any agreement, nor any connection, nor any idea in reference to the destruction of the papers with the "Tripartite Agreement," or the arbitration. All our witnesses swear the other way; Claflin, Freeland, Storrs, and Wilkeson all swear that there was an agreement that all the papers should be destroyed. Now, I have got the oath of Mr. Moulton and the oath of Mr. Tilton, that immediately after that Mr. Moulton handed to Mr. Tilton the papers to be destroyed, and I have got the oath of Mr. Moulton that he told Mr. Beecher that he would keep that paper tied to the other, and that they never should be separated, and should be kept together for his protection.

Ah! gentlemen, you have a self-confessed, absolute treachery, and absolute conviction of their falsehood; you have got them both. Their conduct shows in their ready seizure of an opportunity given by that compact, to destroy all, to hurry to destruction this one, and then, in order to explain their possession of all the others to use them against Mr. Beecher when he wanted this one for himself of all others in the world, they say there was not anything said about destruction of papers, and there was no right to destroy any papers. Where is your promise that the two papers should be kept together? Ah! gentlemen, what did Moulton tell Charles Storrs about this unilateral saving of papers? Charles Storrs was asked what Mr. Moulton said about burning the papers, and he says that Sam Wilkeson had seen him, or written him that he wanted him to be sure to burn Mr. Beecher's "apology," and all the papers, and Mr. Moulton says: "Of course I burned all the papers," and he laughed, and he says, "Mr. Beecher thinks I have," and then he says: "If Sam Wilkeson thinks I have burned all the papers he is mistaken. What would Theodore do with his trouble?" And when Mr. Moulton is recalled he doesn't

deny a word of that. Now, don't you believe that it was a part of the arrangement that peace was concluded all around, and that all the papers were to be destroyed; and don't you believe that this man hastened to destroy the paper that we want, and that we miss? If truth would be on their side from it, so much the better for them, so much the less reason for their destroying it. So you needn't worry yourselves that they have lost anything by its being put out of existence. Ah! how they jumped at the idea that, now, this pledge of Mr. Moulton would justify the destruction of all the papers, and that the treacherous wickedness of Mr. Moulton, self-confessed in act, that he did destroy one, separated it from the rest, and his production here of the rest, that he did save the rest, and then his sneering remark to Mr. Storrs: "Oh! I have burned all the papers, of course," and he laughed, and then he says, "Mr. Beecher thinks I have"; and then he says, "If Sam Wilkeson thinks I have burned all the papers, he is mistaken. What would Theodore do with his trouble?" What of the trouble that he was using heretofore and means to use hereafter? "Now, Theodore and I have only burned that one paper."

#### FOURTH DAY, JUNE 2, 1875

*If Your Honor please, and Gentlemen of the Jury:*

We may perhaps consider for a few moments in advance what would be the probable attitude, what the tone, what the temper, what the method of accusation, and what the reception of the accusation that would, on the known proof of human character and human conduct, mark the first interview between the accusing husband and the guilty adulterer. Nay, more, if the accusation were to proceed upon the information conveyed to the unsuspecting husband by the corrupted or uncorrupted wife—I mean the adulteress—you would like to see what, upon these recognized principles of human character and human conduct, would be the terms,



the attendant circumstances, the emotions with which this dreadful fact was first disclosed by the confiding wife to the unsuspecting husband.

Is adultery in a reputable family, in a respectable connection of society, and with a woman of even the ordinary traits of purity, of intelligence, of piety, and of domestic affections, a commonplace occurrence? Is it to be treated like a cut of the finger or a bruised brow? Is there anything that more upturns the deepest feelings of the husband and of the wife, when, brought by the urgency of conscience, guilt is disclosed, pardon is begged, and either the wife is slain by her husband or is pardoned by his superhuman charity? What tears, what sobs, what solemn silence, what deep contrition, what conflicting, convulsive emotions, fill the husband's heart and show themselves in conflicting exhibition of his purpose, and finally of his conclusion! And then, when the injured husband meets his friend, the corrupter of his wife, the destroyer of his own honor, the defiler of his marriage bed, and the shame and disgrace of his children, and his children's children; when a husband thus outraged, of whom it is said by a wise man, that I have had frequent occasion to refer to, not much in repute doubtless with the new dispensations, that get direct revelations from heaven through mediumistic fits—Solomon says that "jealousy is the rage of a man"; and when two such parties come together, you may imagine that if there be at the bottom either information on the part of the accuser, mistaken if you please, certainly if well-founded and conscious guilt on the part of the accused, that you will have a scene that cannot be handled by any mere conception and preparation beforehand. Nature will, *will* show itself in such an interview, if the great and central fact exists, either as a truth, or as a conviction on one side, that of the accuser.

And now, gentlemen, I shall satisfy you upon a mere reading of this plaintiff's story of that interview, rightly inter-

puted, by that knowledge of human affairs which you possess and that knowledge of his character and of Mr. Beecher's which you have gained in this trial, that that narrative, upon its own reading, is a self-exposed and self-convicted invention, framed by that degree of cunning that believes in words, their instrumentality, their rhetorical connection.

This plaintiff understood that the wife's confessions, if there had been any, could not be made the subject of evidence against Mr. Beecher. Our law convicts parties on their own confessions, not on the confessions of others. This idle word about Elizabeth's confession, or Mrs. Tilton's confession, that has been dragged in by Moulton and Tilton as often as might be during their protracted evidence, is a solecism in terms. It was an accusation of another, never a confession of her own.

I will show you—what you supposed to be cunning on the part of this inventor of this story, to cover his disgrace in bringing to light the shame of his wife that he had once pardoned, to make it probable and possible that such a woman could be in such a guilt—that he has covered it with inconsistencies with human nature that make the whole story incredible and self-contradictory. He knew that the confessions, I say, of a wife could not be given in evidence; he knew, too, that confidential intercourse between the husband and the wife (although the laws of evidence were so much relaxed, as it was held by the Court, as to permit the husband to testify against the wife, or against the defendant, in the wife's cause)—that the law did not permit the statement of anything that passed between him and his wife. He knew that the only mode in which he could bring to your notice, as having occurred between himself and his wife, what it suited his purpose to propose to you as having occurred, was by weaving it into a recital or narrative that he should repeat to Mr. Beecher; and then he thought: "Now I have an opportunity to weave the web of my metaphysical argu-

ment, that a woman that was good and pious, and that loved me, and that still loves me, could be led into what all the world considers as betrayal of the husband, prostitution of herself, desertion of a mother's duty to children, and an abandonment of everything that makes up good character and conduct and pure fame, and yet remain unsullied in her conscience and untouched in her purity. So, too, I can weave into it an explanation of how a good man and a great man can find in conscience, and in religion, and in duty, a provocative and a support to a course of conduct that, in the general judgment of mankind, would be, must be considered as base, as vile, as injurious to all the interests of society, as fatal to the fame of everybody and everything that the good and great man valued, as it is possible to portray even in the imagination of a poet, in the conduct of a wicked man. I thus," he said, "by the enchantment of my words and the prettiness of my sentiment will gild this awful guilt with what will make it credible, or else it can never be believed." And there he is, the victim of his own shallow philosophy.

You will observe, gentlemen, that as we have led up to this interview we have shown you the occasion of Mr. Tilton's resentments against Mr. and Mrs. Beecher's interference with his domestic peace and credit. We have shown you his deep ground of resentment against Mr. Bowen, and his deep sense of folly of his attack upon Mr. Beecher, and of the ruin that had come from it, in destroying the only counterbalancing influence against Bowen's absolute condemnation that the wit of man could suggest: the support—the recurrence to the support of Mr. Beecher.

Now, we will show you by the traits of this matter of the 30th of December, in all its stages, that the great effort was to find some means by which the audacious attack of the 26th upon Mr. Beecher, and its absolute recoil, could be displaced from his mind and put out of the way. Why, gentlemen, you would suppose that the first feeling of Mr. Tilton,

if he had suffered this injury, and Mr. Beecher was guilty, no matter whether his purpose was to ruin Mr. Beecher or whether his purpose was to coerce Mr. Beecher into coöperation for his—Mr. Tilton's,—restitution, that he should follow up that attack, whose support had not yet been disclosed, except in the consciousness of Mr. Beecher, if the cause existed—by the open, by the vehement, by the damnable accusation, and give the adulterer the choice, to take his ruin or become his servant; and so any man would have dealt with any man if there had been any fact upon which to rest. On the contrary, on the showing and admission of Tilton and Moulton, and more, upon the absolute and necessary conclusion from the facts that they state, the whole object of this interview was to undo the mischief that had been done, not to Beecher but to Tilton, by the attack—joint attack of Bowen and Tilton in the missive of the 26th.

Before I am through with the close examination of this day's proceedings, the 30th of December, I shall have occasion to point out to you, step by step, how wholly inconsistent with the theory and with the charge, and with there being any truth in the charge, as now proposed, of adultery, is everything that came out of the mouth of Mr. Moulton, out of the mouth of Mr. Tilton, out of the mouth of Mr. Beecher upon that day.

I take up now the evidence of Mr. Moulton as it attaches itself to the preliminary walk from Mr. Beecher's house to Mr. Moulton's, where Mr. Beecher was to expect to meet Mr. Tilton. He says to Mr. Beecher, in the house of the latter:

Mr. Theodore Tilton is at my house and wishes to see you.

The answer of Mr. Beecher is perfectly natural and unconcerned:

"This is Friday night; this is prayer-meeting night; I cannot go to see him."

"Well," I said; "He wants to see you with regard to your relations with his family and with regard to the letter he has sent to you through Mr. Bowen."

Well, Mr. Beecher knew perfectly well that his relations to Mr. Tilton's family, in those terrible scenes in which he had been engaged by Mrs. Tilton's appeal, a fortnight before, and in the deliberations and in the advice, and in the fact that Mrs. Tilton had gone back and doubtless had conveyed to her husband everything that had occurred on Mrs. Tilton's part, and on his, and that in this patched-up amity between them they were perhaps, neither of them, certainly not Mr. Tilton, disposed to look with equanimity and patience upon this intervention of Mr. and Mrs. Beecher in their domestic affairs—he knew perfectly well that there was a just right of Mr. Tilton to desire to speak to him concerning those affairs.

He knew, also, that Mr. Tilton had sent him that letter on the 26th, and he knew that Tilton, if there was any reason for sending that letter, which had not shown itself, certainly, in any consciousness as betrayed by Mr. Beecher, might very well want to say something about that; in other words, Mr. Beecher saw and knew that on these two points of his and his wife's intervention in the domestic affairs upon the invitation of Mrs. Tilton and Mrs. Tilton's mother, of this moody, passionate, willful, capricious man, Mr. Tilton, and the strange attack followed by the strange (in connection with that attack), interview with Mr. Bowen and the ruin of Mr. Tilton in his relation to his employer, his employment, and his livelihood, which Mr. Bowen had announced to him (Mr. Beecher)—he knew that the situation in which Mr. Tilton and his family found themselves was grave, was serious, was calamitous. And when Mr. Moulton said to him, "These are the two topics on which Mr. Tilton wishes to see you," Mr. Beecher, with that sensitiveness of sympathy and that profuseness of magnanimity, saw at once that it was



his duty to accede to this not unreasonable appointment. Now, look at it, "He wants to see you"—these are the first words of Mr. Moulton—"in regard to your relations with his family, and with regard to the letter that he has sent you through Mr. Bowen." Now, leaving out all irrelevant matter, you will see how Moulton was in the common purpose of inflaming Mr. Beecher against Mr. Bowen and attracting him to friendship for Mr. Tilton.

· And we walked along together and I told him what Mr. Bowen had said to Mr. Tilton concerning his (Beecher's) adultery. I told him that Mr. Bowen had charged him with adulteries, in the presence of Mr. Tilton and Oliver Johnson.

Now, did that look like an honest interview between an accusing husband and a guilty paramour concerning Mrs. Tilton's guilt and concerning Mr. Beecher's injury to Mr. Tilton, and a proper introduction to the sentiments, the purposes in that interview that must have influenced Mr. Tilton, unless he was either more or less than man? Oh no, this confidential friend wanted to propitiate the mind of Mr. Beecher in advance to the friendship that Mr. Tilton needed from him, by showing him how wicked Mr. Bowen had been, and how that letter of the 26th, which Mr. Moulton had told him was the reason of the interview, had proceeded from—Bowen's wicked, unrestrained imputation against him—Mr. Beecher—and that what that letter meant "for reasons best known to yourself"—or—"well known to yourself" meant the consciousness of the adulteries that Mr. Bowen had treasured up and had infused into Mr. Tilton, animating his zeal for public morality and his duty for purity in the households of Brooklyn. Mr. Moulton weighs his words and chooses his topics for the object. Now, Mr. Beecher said that was singular; when Bowen brought him that letter he pledged his friendship to him. Well, what that was you have seen. Bowen said he came as a friend

and continued a friend. He did not inform him that he had told Tilton any such thing. No, he had stuck the letter together so that Mr. Beecher should not even know that he knew what was in that, and he told him furthermore—now, look at how these traits show there was no guilt in Mr. Beecher's mind, no accountability, no fear of his resentments on any other grounds than these:—"And he told him furthermore that he had sympathized with Mr. Bowen in the stories told him against Tilton; that Mr. Bowen told him some stories against Tilton and that he had sympathized with them." Now, those are the topics, those are the interests in Mr. Moulton's mind, those are the thoughts in Mr. Beecher's mind—"Tilton finds that Bowen has been using that interview with me contrary to what was the declared purpose and confederation between Bowen and Tilton, and I find—I, Beecher, find, from this gentleman's statement, that Bowen's slanders, for which I have the utmost contempt, as I have trampled them under my feet for years—that those have been inspired into this young man's mind and he, in his extremity, has been made the tool of Bowen, and Bowen sent that blow and the recoil has killed Tilton."

Now, that is the way they came together. Out of the fullness of the heart the mouth speaketh, even when the heart is small and the mouth is large, as in Moulton's case. Now, that is all on the topics that were to be the subject of consideration. There was something said about the weather, and an avowal by Mr. Moulton that he was not a Christian, which was uncalled for under the circumstances. He was not pushed into it as St. Peter was when he stood before the fire and warmed his hands. It was a voluntary avowal, in a Christian city, that he was not a Christian and was a heathen. But thinking that that alone would not recommend him to a Christian minister, he said: "Now, as the best pledge of any friendship I can frame and propose to you, I will show you how a heathen can serve you." And what-

ever else may be said, and proved, and charged about Moulton's inconsistencies and his treachery, he has never been unfaithful to that pledge; he has shown you how a heathen can serve a Christian minister. But we know that, from the time of the Apostles, when they stoned them and burned them over the fire, and imprisoned them in dungeons, and tortured them in boiling lead—we know how the heathen liked to serve Christian ministers, and Moulton told this man that he would show him how he would serve *him*. And perhaps Mr. Beecher has found out. You have, at any rate.

Now we get to the house, and the husband is before the seducer and the paramour. Now we have a narrative uninterrupted that fills about three columns, I should think, of a newspaper, and it is a full rationale of this case as propounded by Mr. Tilton, intended to introduce what he proposes to your common sense as an actual interview between himself and his wife, and an actual interview between himself and the paramour. And you will see whether you think it will stand the test of common sense and of common decency in respect to either. But you will see now how he betrays himself. What he wanted, what was uppermost, what was the object, was to get out of the terror and the destruction of Mr. Beecher's resentment against him for that letter. And so, forgetting all his own wrongs, forgetting the tortures and disgraces, and pity for his wife, and pity for his children, and all the flood of passions, good and bad, that overflow and boil over in a man the first time he meets the adulterer that has ruined everything that is dear to him, he begins by going at what Moulton has gone at—this letter, and Bowen's accusations of Mr. Beecher. Now, he says to begin with, and to be carried along, I suppose, with his narrative, "I cannot undertake to repeat accurately, that is to say, I will not attempt to give the words, except at certain points, because what was said was mostly said by me, and I have no special gift at recalling words." Then he goes on

and gives you, I say, a narrative, three columns of a newspaper. "I can better recall what he said than what I said." Well, I should think so, because he says Mr. Beecher did not say anything. No doubt, you can better remember what a man said when he said nothing than what another man said when he talked half an hour. "I began in this way—I am entirely accurate as to the first words spoken, and they were these." Now we have a start-off between an infuriated husband and a guilty paramour, each knowing the truth about the other.

"I said: 'I presume, sir, that you received from me a few days ago, through Mr. Bowen, a letter demanding your retirement from your pulpit, and from the City of Brooklyn?' He said: 'I did.' I then said to him, 'I have called you here to-night in order to say to you that you may consider that letter unwritten, unsent, blotted out, no longer in existence.'"

And on Mr. Tilton's cross-examination I draw from him that that was the absolute purpose, the perfect desire to get it possible, as between him and Mr. Beecher in regard to Mr. Beecher's feelings toward him, as if that wicked and impudent letter had never been written. Beecher's friendliness to him was what he was aiming at, and did aim at all through that week, and on his own showing what a strange position, if he had the least idea of these relations between Mr. Beecher and his wife that he now parades. His position would be this: "I wanted to be sure of Mr. Beecher's feelings toward me. I knew he loved my wife, but I didn't know how he felt toward me." And he meant to find out. "'I thank you,' he said. I replied: 'Your thanks should not go to me, but to Elizabeth. It is in her behalf that I hold this interview, and whatever I shall say here, or in consequence of this meeting, is, not for your sake, nor for my sake, but for her sake.' I then asked him whether Mr. Moulton had shown to him a statement which Elizabeth had written. . . . He said that Mr. Moulton had shown him no statement. I then

said, 'Do you not, then, understand the object of this interview?'" Well, he ought to by this time, because Mr. Tilton had told him. "'I have called you here to-night in order to say to you that I wanted the letter I sent to you blotted out.' 'I do,' said he, 'in general terms.'" Those were the general terms that Moulton had expressed to him—it was about his relations to his family, and about that letter. "I then replied, 'you should understand it more specifically.'" Now, look at the cool way in which this rhetorician opens the deepest passions and resentments of human nature. "You should understand it more specifically. I will read to you a statement which Elizabeth has made. Mr. Moulton has the original; I have a copy; I will read you the copy."

Now, Mr. Beecher knew that he was an adulterer if there had been any adultery, and that Mrs. Tilton was the partner in his guilt, and that she had made a statement; and that this letter and the troubles in his family that Mr. Moulton has spoken of as calling for this interview with Mr. Tilton, were of that grave matter; didn't he? Didn't he know it then, if there was anything? You must judge. I tell you he did. If there was any fact, he knew it. If there had been a disclosure, he knew it. If Mrs. Tilton had accused him, he knew it. If Mr. Tilton had a charge of those facts, he knew it; and he knew if he had any charge, if those facts were true, it was of those facts. Now, see how the man meets it. He said, cool as a cucumber about this statement, while Mr. Tilton "was searching for the copy which I had made of Mrs. Tilton's paper, he said to me: 'Before reading that, Theodore, I wish you would tell me what Bowen has been saying against me.'" Well, now, between this lion of a husband and this consciously guilty man, could there be anything more ludicrous than this? "You ought to hear Elizabeth's statement; I will search for that"; and there was some delay. Mr. Beecher says: "Well, Theodore, before you read that I wish you would tell me what Bowen has been saying against



me.” Well, how did the husband meet it? How did he meet it? Why, he says: “I replied to him that I had not summoned him to the interview for the purpose of discussing with him Mr. Bowen’s affairs, but that he should go to Mr. Bowen himself. Nevertheless, as he asked me the question, I would say that Mr. Bowen in an interview with me on the preceding day had made a statement that”—now, we have got it as in quotation marks—that—see, Tilton wanted to get in as early as possible what Bowen had had to do with that letter, that it was Bowen’s calumnies, if they were calumnies that were at the bottom of it—“you have been guilty of adulteries with numerous members of your congregation ever since your Indianapolis pastorate, all down through these twenty-five years; that you were not a safe man to dwell in a Christian community; that he knows numerous cases where you have shipwrecked the happiness of Christian homes; that he has determined you shall no longer edit ‘The Christian Union.’”

You see Bowen, with his zeal for morality and religion, and exposing the turpitude of this Christian man that was thus ravaging the sheepfolds of Brooklyn, and had been for twenty-five years, to Bowen’s knowledge! Well, didn’t that rather make him an accessory before the fact to the ruin of all these Brooklyn people? Mr. Bowen, even, with that Christian indignation, had brought it to the point that it was determined “you shall no longer edit ‘The Christian Union.’” That is the first thing; “that you shall no longer speak in Plymouth Church; and he says distinctly”—Now, you have the moral sentiments from Bowen; he doesn’t mean to be mistaken—“that you are a wolf in the fold, and that you should be extirpated.” Well, now, he is very bold about Bowen’s feelings toward Beecher. He didn’t wish to ameliorate Beecher’s feelings toward Bowen; that is plain. He didn’t take the means of finding out or securing friendliness on Beecher’s part to Bowen. Oh, no. Truth, truth governs

this part of the conference. "Mr. Beecher said"—and whenever Mr. Beecher says anything, you will see that it is perfectly natural for an honest man that knew what his own character and condition was, and cared not for the maligner—"Mr. Beecher said that it was a matter of amazement to him that Mr. Bowen should have so spoken; 'for,' said he, 'when Mr. Bowen delivered to me your letter demanding my retirement from the pulpit, he appeared to be friendly, and offered me his friendly services in the matter.'" Well, if Mr. Tilton had had any doubt about the trick that Bowen had played him at that interview, he now had his mind disabused of that doubt.

I then said to him that I had joined with Mr. Bowen at the beginning of the week in making that demand upon him to retire; that I had written that letter at Mr. Bowen's suggestion; that Mr. Bowen had requested that such a letter should be written, and had said that the reason why he could not write it himself was that in the preceding February—that is February, 1870—he, Bowen, had had a reconciliation with Mr. Beecher, and that Mr. Beecher had begged his pardon, and had bent himself on the floor and wept, and Mr. Bowen had freely granted him forgiveness for the crimes he had committed.

Good heavens! How came Mr. Bowen to be gifted with the power of absolution for sin? All these adulteries which Mr. Beecher had been committing for twenty-five years, ravaging the flocks, and was still perpetrating, all forgiven!

That he, Bowen, had freely granted him forgiveness for the crimes he had committed, and Mr. Bowen said, in view of having granted that forgiveness, he could not initiate proceedings against Mr. Beecher, but if I would initiate them by sending such a challenge, he (Bowen) would sustain that demand, and in the interest of morality and religion expel Mr. Beecher from his pulpit and from the city. That he furthermore had said that he, Bowen, had it in his power at any time to drive Beecher out of Brooklyn within twelve hours.

Well, Mr. Beecher didn't trouble himself at all about the substance of these accusations. His reply now, as before, was of amazement that a man could talk in that fashion.

Mr. Beecher again spoke of his astonishment that Mr. Bowen should have said such things to him—or to me (Mr. Tilton corrects himself)—on Monday, and then have expressed himself in a friendly way, as Mr. Beecher described it, on the occasion of delivering the letter.

Well, these twenty-five years of adulteries, drowned out by the pardon of Bowen, then passed very much out of consideration and don't seem to have troubled anybody's mind since. It has been printed in the papers in the form of a letter from Mr. Tilton to Mr. Bowen. You don't find anything printed from Bowen—there is nothing from Bowen that does not come through Tilton. People have read it and yet the wolf goes on, not in sheep's clothing any more, of course, because the sheep's clothing has been stripped off, but he goes on, not only with absolution for the past, from Bowen, but indulgence for the future from the same great ecclesiastical authority.

Now, after this cool, quiet introduction which Mr. Tilton flattered himself was so artful for the purpose which he had, of throwing on Bowen all that letter, and inflaming Beecher against Bowen and drawing him towards himself, he then goes on and gives the reason he had come to this interview with Mr. Beecher. Now, mark how he confirms our statement and belies his own, as to what passed between him and his wife during this week.

I then told Mr. Beecher that after I had had this interview with Mr. Bowen I had narrated the substance of it to my wife; that my wife was ill, and this intelligence filled her with profound distress; and that she had instantly said to me that it was a violation of my pledge and promise to her, made in the preceding Summer, that I would never do the Rev. Henry Ward Beecher any harm, or ever assist in any exposure of his secret to the public.

Well, I think Mr. Tilton's conduct was rather open to that criticism of his wife, if he had pledged himself that he wouldn't do any harm to Henry Ward Beecher. He had told you that his animating motive when he wrote that letter to Mr. Beecher was to strike him to the heart, and to drive him out of Brooklyn in twelve hours, and he thought he would do it by that letter; so it looks a *little* as if he had violated a pledge, if he had made one. So there is nothing that any of these people do at any step that they do not have to avow is infamous in motive and in its violation of every pledge. She said to me: "If Mr. Bowen makes a war upon Mr. Beecher, and if you"—now, Mr. Bowen had not shown any disposition to make war upon Mr. Beecher except so far as Tilton would carry it on—"and if you join in it, and Mr. Beecher retires from his pulpit, as he must under such an attack"—that is the poor wife's notion, if under the attack of Bowen of these adulteries of twenty-five years he retires, as he must—"everybody will, sooner or later, know the reason why, and that," said she to me, "will be to my shame, and to the children's shame, and I cannot endure it." Well, now, how do you suppose that topic, thus brought up suddenly, with all its horrid meaning to a guilty soul, was received by Mr. Beecher, and how was it treated by Tilton? I am taking Mr. Tilton's story; he cannot complain of that. When he had said this, made this incidental reference, "Mr. Beecher then asked me what I meant by speaking in that way of Elizabeth and her shame." "Why, what is all this? Your wife? your children? I understand thus far: you have been talking about that letter and about Bowen's charge of 'adulteries.' You told me that you were fumbling for a statement that you were going to read to me, but now you have said something about Elizabeth and 'her shame,' now that, that, *that*, is something that I would like to hear about. What is that?"

"He asked me," says Mr. Tilton, "what I meant by speaking in

that way of Elizabeth and her shame; so I then read to him a copy of Mrs. Tilton's confession, a copy which I had made in the early part of the evening; the original of which was in Mr. Moulton's possession."

Well, I objected and asked for the paper. He said the paper was destroyed. "When was it destroyed?" "It was destroyed by Mrs. Tilton's own hand." "The copy you took, I mean?" "The copy was destroyed that evening during the interview; the original was destroyed two years later by Mrs. Tilton, in my presence." "Is that the one that Mr. Moulton speaks of in his testimony as having been destroyed?" "Yes, Sir." Then Mr. Fullerton asks, "Destroyed immediately after the 'Tripartite Agreement' was signed?" Mr. Fullerton knew when it was destroyed. "Yes, Sir; after the 'Tripartite Agreement' was signed, at Mr. Moulton's house," that paper was destroyed. Well, he read the paper whatever it was. He says:

After I read to him, then he lifted his hand as if he were about to speak, and I said, "No, Sir; hear me through, and speak then."

And then gentlemen, we had a most extraordinary occurrence here right under the eye of the Court, and in the face of the jury. I objected, under a well settled rule of evidence, as I supposed, to allowing parties that had destroyed the vital paper willfully, to undertake to give evidence of its contents; and the law does not allow that. The law understands that a paper must speak for itself, and provides that people shall not be allowed to destroy it and substitute their memory or their invention. My learned friends with great ability, which, indeed, characterizes all their forensic interlocutory arguments—Mr. Fullerton and Mr. Beach both—argued that that rule could not apply, because the paper was destroyed with Mr. Beecher's concurrence, that night, with his concurrence, before his face, by Mr. Tilton, and the original afterward, with his concurrence. Well, that has not



been proved. I said, "It will be time enough to put it upon that ground, to get a right to give parole evidence of that paper, when you have proved Mr. Beecher's concurrence," but they argued and argued that it was not fraudulent, and that the proof was admissible, although the destruction was purposed; for their argument was that it was done as a deliberate act and upon the concurrent purpose of Mr. Tilton and Mr. Beecher then, that night, and some concurrence of Mr. Beecher afterward, two years afterward, though that, of course, they had not then given any proof of. I brought the authorities and read them, that even a destruction that was not fraudulent, if it was purposed, would not permit the introduction of secondary evidence by the person who purposely destroyed the paper, because the interests of the administration of justice could not be exposed to the question whether it was fraudulent or not; but it was only when accident or mistake had caused the destruction of a paper, that parole evidence or secondary evidence of its contents could be given; and would you believe it, when that discussion was over and this paper had not been permitted to be detailed by his tongue, and he had heard this argument of his counsel that it had been purposely destroyed with Mr. Beecher's concurrence, and therefore the testimony ought to be allowed, and that the books did not allow that distinction, but allowed the distinction of the accidental destruction—would you believe it the next moment that he opened his mouth on the witness-stand, after this discussion, he threw his counsel bodily overboard before your eyes, crushed their argument that the destruction was purposed and with Mr. Beecher's concurrence, and said that in the heat of his presentation of this case to Mr. Beecher he had inadvertently picked this paper to pieces, and found he had destroyed this copy of the confession!

Now, gentlemen, that was done before your eyes, under the ready wit and the short reckoning of Mr. Tilton, that if

he did put his counsel to the open shame of arguing, upon his previous instructions, that the paper had been destroyed purposely and with Mr. Beecher's concurrence, he at least would help his cause, as he thought, and invent an inadvertent, mistaken, unintentional destruction. Well, it did not answer the purpose. It didn't remove my objection, because the original had been destroyed; and it did not satisfy the ground of his Honor's exclusion, which was another point. So much for that wriggling of a witness and a party out of one scrape into another.

Now, gentlemen, we come to this plaintiff's (the husband of an adulteress) narrative to the paramour of his wife of the wife's statement to him. Mrs. Tilton's confessions are not permitted to be given in evidence and have not been given in evidence in this cause from anybody. Mr. Tilton was not allowed to give them because it would be infidelity to confidential communications from a wife. Nobody else has given them; nobody else could be allowed to give them; and yet you have a long narrative that, at first view, looks as if it was a statement by a witness of what she confessed; but you will see at once the difference, when it is *only what he told Mr. Beecher*, as what she had confessed, that has been permitted to be given in evidence, not tending to prove that it was true, not permitted to have that influence on your minds, because it would be equally a part of his statement to the paramour, whether it were true or not, wouldn't it? It would be an enginery to probe the paramour's conscience, and to alarm him into an admission, whether it was true or not. If a husband, suspecting a paramour, seizes him un-awares, and invents a confession of his wife and puts it to the paramour to see how the paramour will deal with it, why, he uses a weapon the effect of which on the paramour will be the same whether his wife has confessed or not, if the paramour knows it is true. Many a case of that kind is found in the books.

The force of all this permitted testimony of what passed between Mr. Beecher and Mr. Tilton is to bind Mr. Beecher by what he does; not to prove the truth of the statements that are made to him by Mr. Tilton. And you will see at once the difference. I could cross-examine Mr. Tilton as to whether or no he told Mr. Beecher all this rignarole, if I had thought it worth my while, but I could not cross-examine him as to what passed between him and his wife. I could not explore the secrets of that interview and draw out from his unwilling mouth, perhaps, against his will, the truth of what passed between himself and his wife; because he had not been allowed to swear what passed between himself and his wife, and I could not occupy a field by cross-examination that had not been opened. The same objection to making a husband, or allowing a husband, to reveal confidential passages between himself and his wife, would have excluded my cross-examination as to the actual occurrence between them, just as much as it excluded his direct testimony. Therefore, you will see that this matter of whatever passed on that July night between Mr. Tilton and his wife remains wholly unexplored; no affirmative direct evidence has been permitted to be given of it; my side of the case has been excluded from probing, from testing, from convicting of falsehood and of folly, the story of any such interview.

But as a part of this interview between the husband and the paramour, this becomes a subject to be commented upon, and is invaluable. This is the husband's reproduction of what he alleges was an interview between his guilty wife and himself on the occasion of his becoming first informed of the guilt of the wife, and when he had had no suspicion up to the moment of the interview.

Now, you would suppose that a woman that had made up her mind to tell her husband of such a course of life, as this woman is said to have admitted to her husband, would have had some emotion; there would have been a sob or a tear;

there would have been a justification, a deprecation, a subjection to his mercy on the part of the wife in her own behalf. Can you figure to yourself, in our circle of society and on the level of these people, saying nothing of the particular delicate traits of Mrs. Tilton, her severe notions about the least approach of unchastity, her severe condemnation of all immorality in others, her hatred, her abhorrence of any approach or exhibition of the fallen condition of woman, her sister, which excited such feeling in her that, while other people were patient and courteous and embraced with kisses, Mrs. Woodhull in her presence, as Mr. Tilton tells you himself, whenever his wife and Mrs. Woodhull were in the same room their eyes flashed fire at one another—do you suppose such a woman, that had dragged her body through the prostitution of sixteen months, and through the longer indignities of the coarse approaches of three years before—to be sure one incredibility shuts out another; the whole thing is so incredible that you cannot reason upon its ever having occurred, but his theory is that it had occurred—do you suppose that a woman whose eyes flashed fire whenever they lit upon Mrs. Woodhull's face, could have, under the power of conscience, made a long confession of her guilt, of the facts if it was innocent adultery, of the disreputable facts that, *unexplained*, looked a little against a woman certainly, and had the narrative begin and go on as this one does?

Ah! gentlemen, a witness that is not to be contradicted, when he tells this narrative can make it match, perhaps, *in words*, but the folly of expecting to have it match human nature, in the judgment of men, in the judgment of women, in the judgment of a jury, is utterly incalculable and preposterous! The idea entering into the shallowest pate, unless it was a shallow pate inflated by self-conceit, that he could make credible an interview between husband and wife, that the very stones of the street would cry out against as a libel on human nature, a libel upon a woman that could say

it, and a libel upon a man that could hear it! Now, see how the wife begins.

Mr. Tilton says:

"I told Mr. Beecher that in the early part of July previous to that interview (that is, July previous to this December), Mrs. Tilton had come home unexpectedly from the country and had said to me that the object of her return was to communicate to me a secret that had been long resting upon her mind like a burden"—these are her words, figurative, you see, rhetorical—"which she wished to throw off"—cool, quiet—"that she had on several previous occasions come almost to the point of making such a statement to me"—*statement*; no confession, no notion that she was going to make a confession, but a statement—"and once in particular while on a sick-bed, but that she had never until then, having been restored to health"—well, she had been in health before, and the time she most thought of it was when she was sick—"she had never until then, having been restored to health, been brought quite to the point of courage—the disclosure."

Now, was there ever a cooler adulteress lying by the side of a husband in a marriage-bed, and introducing the shameful narrative that burns into the soul of a woman, and she a woman whose eyes flashed fire at the presence of impurity? Ah! Mr. Tilton, you can invent speeches for Tiltons; you cannot invent them for women! "That before she would announce to me what the secret was"—you see it was not anything of hers, nor that he suspected that she had anything to do with it—"she exacted from me a pledge that I would do no harm to the person concerning whom the secret was to be told." A unilateral secret, obviously, for it only related to one person; no connection with this living soul and body that lay by his side, and was talking to him.

"And, furthermore, that I would not communicate to that person that she had made such a revelation to me"—no confession—"because, as she said, she wished to inform him of that revelation herself."



Ah! gentlemen, not much notion of confession to Mr. Tilton; the word didn't occur; not much notion of consciousness of guilt on her part, the sin of unchastity and pollution of body, and you remember her letters that my learned brother exposed to you with such effective demonstration as the anatomist exhibits over the torn frame of a subject. And Tilton was as cool as she.

"I had given to her this pledge," and that you might not doubt how sacred it was, and solemn: "my word of honor that I would neither disclose her secret"—that is, the secret she was going to tell—"whatever it might be, nor would I injure the person concerning whom it was to be told."

So they keep it up, and you see, gentlemen, now we don't need to talk about these things, the impossibility of such a beginning, not in respect to the memory of words, but in the very imperishable principles of human nature and human character, puts to flight all solicitude about believing anything that comes after; and when you have a living witness and a credible man, Mr. Beecher, who tells you that all this folly never was produced in his hearing, and gives you a perfectly rational explanation of what was said to him as coming from the wife, which is perfectly consistent with this telling of the story about a third person that didn't involve the wife's character or her conduct, to wit, a withdrawal of her affections, and, if you please, the further statement of rejected addresses—when you have a living witness that testifies along the live current of human nature and human conduct, you then can understand how this witness has fixed the real traits of any communication or statement as not being a confession on the part of the wife, but an accusation of another, of being something to be told injurious to another, and not to excite animosity on the husband's part against that other, nor even to be made the subject of communication to him, because the lady wished to be the medium of communication to him herself. Well, now, we have got

some third person, about whom something is to be told which has not started a tear or a sob on the part of the wife; nor has it agitated a suspicion or a doubt on the part of the husband. And then she goes on just as coolly; and now listen:

That she then said to me that it was a secret between herself and the Rev. Henry Ward Beecher.

Well, she put in his full title, so that there might be no mistake of the person; and, then, to guard against further misconstructions, she adds, "her pastor." Well, gentlemen, Mr. and Mrs. Tilton knew Mr. Beecher, and they knew he was the pastor of Plymouth Church; and when an agonized wife, under the power of conscience, is going to tell of her seduction, of her prostitution, she would tell of it wouldn't she? She would humble herself in the pillows of the bed and, with sobs and tears and dishevelled hair, tell the sad story of her shame. She would not put in "Rev. Henry Ward Beecher, my pastor," as the first thing she said on the subject. Now, see how she recalls to him; just see how she talked to him there that night: "That as I was well aware," that is, that she said to him—he doesn't say he was aware, but she said, "Now, as you are well aware, my husband," "there had been during a long course of years a friendship between herself and her pastor." She wishes to recall to his mind the general traits and features of this business and relation, so that it won't seem improbable to him that she has committed adultery with a man in the moon.

"This friendship, contrary to my expectation, had been," she says—well, that was fair to throw that in—"had been in later years more than friendship. It had been love; that it had been more than love."

See how the climax rises with the rhetoric that belongs to the passion of the heart.

"That it had been sexual intimacy; that this sexual intimacy

had begun shortly after the death of her son Paul"—well, that is a queer way of speaking of little Paul to the father—"her son Paul; that she had been in a tender frame of mind consequent upon that bereavement."

Now, you know, having got at the fact of the adultery, it is to be made reasonable by connecting it, naturally, with sentiments, and feelings, and a situation of the woman's mind that tends to adultery, of course. You must have the proximate situation to make the adultery natural; and anybody can see that a mother, having lost a child, turns her attention to adultery, of course. Of course we all understand that. That being granted, it is vain to reason against the rest. However, she does a little more.

"That she had received much consolation during that shadow on our house from her pastor; that she had made a visit to his house while she was still suffering from that sorrow—"

All in the name of the dead Paul that this adultery is justified, and there, on the 10th of October—you see we have the date; the date is important; we must get it somewhere; the law requires some particular time and place, and now we have got it. Only think of it, of a woman under the influence of conscience, and stirred by the deepest passions of her sex, or of our nature, having the precision of mind equal to that of my learned brother Morris in drawing this declaration of stating the time and place at Mr. Beecher's house on the 10th day of October, 1868. Now, it could not have been for the purpose of having a suit brought, because she had exacted a pledge, and he had given it on his honor, that he would not do or say anything about the matter she was going to tell him.

Still suffering from that sorrow, and that there, on the 10th of October, 1868, she had surrendered her body to him in sexual embrace; that she had repeated such an act on the following Saturday evening at her own residence.

A queer way of talking to her husband, and for fear there should be doubt, as they had moved from time to time from one house to another, she adds, "her own residence, 174 Livingston Street"; "that she had consequent upon those two occasions"—look at the rationale of it; "consequent upon those two occasions." Not subsequent. Oh, no! There is a logic of connection. Well, as we have a very good maxim that it is only the first step that costs, I think the two steps did justify the reasoning that the rest followed.

Consequent upon those two occasions, repeated such acts at various times, at his residence and at hers, and at other places.

She does not seem to have disclosed the other places. What would our friends have given for the other places? Ah! gentlemen, these other places! There were other places, mind you, or this was a lie, and the same woman that told you with such precision that it was at her residence, 174 Livingston Street, would have at least given a clew that could have been followed out to find the other places. They could have proved them if they had proof, but they had not any proof of these places, Mr. Beecher's house, or hers, any more on this trial than they had of the other places; and, if they had not any proof of the other places, Mr. Tilton thought, on the whole, that there might be more danger of alibi if he had given equal precision to the other dates and the other places that the woman had mentioned—that he said she mentioned. "Such act of sexual intercourse repeated." Repeated such acts. Now, she didn't wish to be misunderstood. Repeated such acts, she said; so she repeated such acts of sexual intercourse, continuing from the fall of 1868 to the spring of 1870.

"That in July, 1870, she had made"—now, this is not a part of her narrative, but it comes in here—"that in July, 1870, she made a confession to me in detail of those acts; that she had given to me also, during that recital, many of the reasonings by her pastor com-

municated to her to change what were her original scruples against such a sexual intimacy."

Only think of it! A woman thirty-five years old that had had six children, one of them lately dead, that speaks of a woman's feeling about chastity, a wife's feeling about chastity, a mother's feeling about chastity, and the pollution of the marriage bed in her own house, which the French law in terms says justifies the husband in slaying her on the spot—and they are not supposed to be a sensitive people on these matters—this woman speaks of that as her original scruples against sexual intercourse. Good heavens! We shall have to ask the maidens when they stand at the foot of the altar whether they have any scruples about sexual intimacy with other men than their husbands, and our wives—we want to know how they feel on this delicate question of casuistry, this domestic question, about which opinions differ, that has so much to be said on the one side and the other for it, to know what their scruples were. Ah! these insidious Christian instructions of Mr. Beecher that removed her scruples about prostitution and adultery and bastardy in her family. Ah, he must have preached with a power to conscience and intelligence that he has not exhibited of late if he could reduce this nature of woman to scruples, and then puff them away with the breath of his mouth. Now, I thought that it was a little steep, to use a slang expression, when she said that she told him that her pastor, for reasons, had induced her to change her original scruples. I broke in there—I could not stand it:

MR. EVARTS: Mr. Tilton, do I understand that this is what you said to Mr. Beecher?

I began to see that I had got him in a grasp that he never could escape from, but that I must hold him by a new twist of the cord that he needn't jump from it. He answered: "Precisely, sir." Well, pretty good for a single word.



Well, now he goes on and gives the reasons, and you see they carry conviction to every pure-minded woman:

“That she had in the early stages of their friendship”—now, the woman was not unwarned—“been greatly distressed at rumors concerning Mr. Beecher’s moral integrity.”

Well, now, every rumor has been traced to Mr. Tilton thus far. Mr. Tilton repeats to Mr. Bowen; Mr. Tilton writes to Mr. Bowen what he says Mr. Bowen said to him, but Mr. Bowen has never come out and said he said it, but you will see how the dreadful alternative that I put to this man of knowledge about Mr. Beecher, if there was any truth of any kind, comes out of his own figment, to be sure, out of his own necessity to make, by a figment, a story that he thinks credible.

“That she had in the early stages of their friendship”—Mr. Beecher’s and her own—“been greatly distressed at rumors concerning Mr. Beecher’s moral integrity.”

Why should she have been distressed about a matter that, as it turned out, was only a scruple of an over scrupulous woman, and that when the vile pollution had been perpetrated and continued had not touched her yet, and for a year afterward, with the notion that she had violated her marriage vows. Ah, this is too extraordinary. “She was distressed at rumors concerning Mr. Beecher’s moral integrity; that she wished to show him”—now comes the justification—comes this shrewd, as this party thinks it, invention of his to make you swallow this adultery as not involving any want of innocence on the part of his wife. How noble her motives now, having heard and been distressed by rumors of Mr. Beecher’s immoralities with women!

She wished to show to him that there was a woman who was superior to the silly flatteries with which many ladies in his congregation had courted his society. •

His society! What does society mean in that connection, of his known immoralities and the silly women—the rumors of his immoralities and the silly women that had courted his society?

“That she wished to demonstrate the honor and the dignity of her sex; that she had done so in her own thought, until finally she had been persuaded by him, that as their love was proper and not wrong”—well, that seemed to be taken for granted, that the love of a married man with a married woman, the wife of another man, that that was all right, and, “therefore it followed that any expression of that love, whether by the shake of the hand, or the kiss of the lips, or even bodily intercourse, since it was all the expression of that which in itself was not wrong, therefore that bodily intercourse was not wrong.”

Well, now, that involved sentence of metaphysical reasoning is almost as long and faulty as some that the newspapers impute to me in my argument. How natural for a woman lying in bed by her husband, and talking about her own adultery to a man who had never heard of it before. How interesting it must have been that, if he had got to accept the fact, at least his reason was not going to be imposed upon if he should understand how it happened.

#### RECESS OF THE COURT.

She proceeded with her exegesis of this adultery after saying that step by step, a shake of the hand, a kiss of the lips, or bodily intercourse, since it was the expression of that which in itself was not wrong, therefore that bodily intercourse was not wrong.

“That she had said to me that Mr. Beecher had professed to her a greater love than he had ever shown to any woman in his life; that she and I both knew that for years his home had not been a happy one; that his wife had not been a satisfactory wife to him; that she wished—that he wished—(that is a correction; ‘she’ does not belong there) that he wished to find in her (Elizabeth) the con-

solation, the help to his mind, and the solace of life which had been denied to him by the unfortunate marriage at home."

Well, what becomes of the twenty-five years of adultery and debauchery that had run on, from Indianapolis down? On this story, this was the first real resort to happiness in marriage which Mr. Beecher had felt at liberty to assume. Late in life, at the age of fifty-six, after he had had nine children, and while he had some six or eight grandchildren, and had fair daughters-in-law about him, and a wife that he had been faithful to from the time they were both seventeen years of age, he thought that his duty required him now to find consolation, reward for a virtuous life, help to his mind—for his mind and his soul were devoted to the service of God, and anything that could amplify the great powers for truth and Christianity that he was endowed with was of course a duty—and the solace of life which had been denied to him by the unfortunate marriage at home, a marriage now, at this date, of a continuance, I suppose, of some thirty years.

MR. PORTER: Thirty-five.

MR. EVARTS: Thirty-five years. Well, what a revelation it was to him; what a revelation to Mr. Beecher at the age of fifty-six, that this unprosperous, unfruitful marriage of his had been a penance and a drain upon his powers, and that now his duty required him to find that support for his future labors that should continue his beneficence in this world! Now, we have the narrative of the wife continued:

"That he had made these arguments to her during the early years of their friendship."

Now, the early years of their friendship carried them back to 1863 and 1864, and 1865. He began at the beginning. But these convincing arguments (that when she had really relished their true moral force and religious beauty, carried away all scruples—and I shall read to you from this same husband, plaintiff, witness's mouth—in the retrospect

seemed to her to make it all for the glory of God) she had not taken without inspection and without resistance.

“That he had made these arguments to her during the early years of their friendship, and she had steadfastly resisted; that he had many times fondled her to the degree that it required on her part almost bodily resistance to be rid of him.”

Now, here was a woman that did not believe in these arguments, at this time, of the early years. She had steadfastly resisted. Her mind had not been overpowered, nor her conscience corrupted, nor her instincts of chastity deadened; but yet through this period he had fondled her, and pressed his coarse, polluted touch to the point that it required almost violence to resist. Now, this is the narrative, this is the course; and this was as coolly delivered by this chaste woman, and as coolly received by this husband, as if the narrative had been about a persistent search for any of the trinkets or gewgaws of dress, through the shops of the city. Now, gentlemen, what sort of a figure, in any rank of life, would a woman make in setting up her chastity as having been overpowered by violence in the final consummation of ruin by force, that began by telling the Court and jury that she, through a series of years, had been fondled so that it required bodily resistance to preserve her virtue? I do not think that we lawyers, or you jurymen, or the Judge on the bench, would listen long to a story of violent consummation against chastity, that had been preceded by years of violent fondling; and yet this rhetorician thinks that he has put a white robe of chastity over his wife by putting such a narrative into her mouth, that he has covered Mr. Beecher with the double guilt of paramour and mistress, and made his wife a saint.

Now, gentlemen, this plaintiff was a little unlucky in his assortment of the two occasions on which this prostitution of his wife occurred, on the theory of absence of desire, and

absence of consent, and absence of coöperation, or enjoyment in the guilt, in putting the first surrender, not at her own house, but at Mr. Beecher's. How did the woman get there? Was she carried in her sleep from 174 Livingston Street, to 124 Columbia Heights? She was not in the habit of going there. There is not any evidence that she was there on the 10th. There was no reason for her going; and yet this silly reasoner, her husband, has made an unconsenting, reluctant, submissive prostitution, attended by the wife's resort to the unaccustomed place of meeting. You can judge as well as I whether that comports very well with the theory upon which this prostitution of the wife is presented. But that theory is the only theory, that statement is the only form and manner and circumstance of this adultery that is pretended by the plaintiff: And now: "That after her final surrender during the period of her sorrow,"—now this is all over again; this is what by the plaintiff's testimony she told her husband—

"during the period of her sorrow, in October, 1868, he had then many times solicited her, when she had refused; that the occasions of her yielding her body to him had not been numerous, but that his solicitations had been frequent and urgent, and sometimes almost violent."

And so we have this renewed condition of a woman who was pure of heart, utterly free from any low or degrading impulses, and that put her fault, if at all, upon being overpowered by piety and duty to the Church and to God, telling you this continued story, after the first sacrifice, that this resistance of her instincts, resistance of her conscience, resistance of her woman's nature, continued, and was constantly overcome, or nearly overcome, but sometimes triumphed; and all this goes on, and not a suggestion or a complaint of any kind, of any degree. Well, there was time for meditation, wasn't there? She was shut up in her own house with these lovely children of hers, and watching over



them and their unfolding beauty and purity. She was taking care of these redeemed women of the Bethel, and saw the misery and the wretchedness that this debauchery had wrought in their hearts, their families, their souls; and that religion, the Christian religion, was the only redeeming influence, and that it was adequate; and yet, without having any of the evil impulses of the heart, or any of the carnal urgency of the flesh, she carried on this concurrent stream of prostitution of her body to a hypocritical religious teacher! This is the way Mr. Tilton makes adultery easy; this is the shape in which he makes it pure; this is the verbal protection against the sin and stain and ruin of those acts which strike at the very heart of the female character.

Now, where did her conscience wake up? It never waked up on the subject of adultery, not certainly for a year afterward, as I shall show you:

“That she made this confession to me” (and that is the first time that the word occurs) “because the sense of deceitfulness in her mind was a pain to her conscience.”

Well, she had a conscience, a sensitive conscience. She saw that somehow or other the thing must be wrong. She knew the seventh commandment which forbade adultery. She knew the tenth commandment, which forbade a man to covet another man’s wife; and that would seem to be plain, but that didn’t touch her; no, no, nothing in that; but there was a sort of concealment about this that pained her conscience.

“That she had gone away from home in the spring” (she repeated all this to her husband) “parting from me under a cloud, as I knew.”

That she said. He wanted all these things to be in evidence; there was no way of getting them in evidence—his own views of how he would like to have this thing displayed before the public. “And that I had written to her”—now

listen to this; she tells her husband all these things, that he knew—

“And that I had written to her in her absence a letter, saying that unless she told me the truth, that if she ever lied to me as she had done in reference to a few minor matters, that I never again could hold her in any respect.”

Well, now, what an extraordinary thing. After the day and the night that the woman was talking to him she had never had the least suspicion of anything wrong about it—nothing; yet she was moved in conscience by a feeling that there was a little duplicity, a little double-dealing in having two bed-fellows at the same time; that, to a mind sensitive to truth and openness, produced a sense of uneasiness; and besides he says:

“That I had written to her in her absence a letter, saying that unless she told me the truth, that if she ever lied to me”—this is his own language, in his own letter, to his own wife, if there is any word of truth in this, that she repeats to him—“If she ever lied to me as she had done in reference to a few minor matters, that I never could hold her in any respect.”

Ah, gentlemen, what was that letter? What is this mode of an ideal happiness undisturbed up to July, when this statement was made between this man and his wife, in which he had written to her a letter that if she lied to him as she had in a few minor matters, he would not hold her in respect? He thinks it a shame that the obligation of forensic duty should require us to point out falsehoods, and describe them as falsehoods, but he thinks it consistent with an ideally happy home that a husband should write to a wife: “If you ever lie to me as you have done, I won’t hold you in respect.” Ah, gentlemen, long stories require considerable power of reasoning as well as memory when they are all falsehoods, and every now and then there peeps out a self-conviction of the utter incongruity with the whole fabric of his case, of his

own little touches of nature and woman's nature, as he thinks it, that he throws in. Now, what an admirable character for a novel this would make. How all the good people of Europe and America, how all Christendom (to use the plaintiff's favorite phrase) would admire the penetration that had seen further into human nature than the inspiration which had made the Saviour say, "All these evil things come out of the heart"; that had spoken with greater authority in regard to sin than the great author of the rules of human conduct proclaimed from Mt. Sinai; who had heedlessly, rashly, foolishly undertaken to say, "Thou shalt not commit adultery," when he had made it evident that piety and duty left the heart and soul unsullied under the pollution of the body. But still, lying: that was wrong. That letter had rankled in her thought and heart. But for that letter this poor woman never would have awakened this side of the judgment seat to a knowledge of the sin of adultery.

"That had rankled in her thought that she felt that she never could look me honestly in the face again until she made a full and free confession; that she had come down from the country on purpose to make it."

And now I suppose there is a little break, and the wife stops here, though this witness doesn't make any break, and he goes on, then, to describe to Mr. Beecher:

"And that she had made with great modesty, and delicacy and womanly feeling, without giving evidence that the great fact which she confessed was wrong, but that the wrong which she wished to throw from her mind was mainly the necessary deceit with which she had hitherto concealed it from her husband."

Now, the husband says, referring to his statement to Mr. Beecher:

"It was a long story. I told him from a little memorandum which I had made of dates and matters, extracts from letters—a little memorandum made on the back of the white envelope un-

addressed in which Mrs. Tilton's statement that evening had been lodged; I had made a memorandum of dates and of letters."

Well, he doesn't seem to have referred to any dates or letters, and he had made that memorandum, not with any letters or facts or records before him, but in the few minutes that elapsed after Mr. Moulton left the house to go for Mr. Beecher until he got back. In other words he was going to deliver an address, an address to Mr. Henry Ward Beecher, and he reduced to the form of notes the heads and points of his argument. Well, Mr. Moulton, the sexton, was sent to bring in his audience.

What a silly story! Now, look at it—this narrative of sixteen months adultery, of three years seduction of all this fondling and resistance and final prostitution. "She had stated with great modesty and delicacy and womanly feeling." Well, there was no emotion about it; that is plain. She had played this difficult fantasia with all the skill of a practiced musician. She had told this narrative with all the delicacy of touch and sentiment that belonged to a novelist speaking of a third person, and you are to take that as a real narrative of a real occurrence, between a real wife and a real husband!

Now he goes on and fills the space between July and December with her absences from town, her visit out West at Marietta; that she had returned from the West a few weeks previous to this interview, I think, about the 1st of December; that shortly after her return, or almost the first conspicuous incident that happened to her husband since her return, was the interview "which I had had with Mr. Bowen on the 26th of December, which had resulted in my demand upon Mr. Beecher that he should retire from the pulpit." Now, you see the Bowen matter comes in. But for Bowen, but for the destruction of his pecuniary interests, this narrative, this pretension, this use of a domestic occurrence of some kind between husband and wife toward Mr. Beecher would never have been resorted to. Six months passed by. The wife

never intimated to Mr. Beecher, although at her request he called and visited her in her illness in August after, and prayed with her; she had not mentioned to Mr. Beecher that she had told her husband anything. Mr. Tilton had not sought Mr. Beecher, or made any complaint against Mr. Beecher, and here he draws in affirmatively and voluntarily the trouble with Bowen as the cause, the occasion, the opportunity, the reason of this matter ever having been brought to Mr. Beecher's notice. Well, you can understand how, after his sending this notice to Mr. Beecher and finding the destruction of his relation with Mr. Bowen, it did come to be brought in, and that is a part of our case. Now he accounts for it as arising out of that fact.

"I told him that I had informed Mrs. Tilton of what I had done with Mr. Bowen, and that she received the intelligence with an expression of heartbreak and grief. I told him in regard to the statement which she had written"—

He didn't call it a "confession" which she had written—a statement that she had written; it was the one that he read; and yet they find it convenient in giving their evidence always to call it a "confession" of hers—we shall show you—you don't doubt what it was. It was an accusation—this paper. I don't mean that she had even told her husband, but this paper was an accusation against Mr. Beecher—

"that in regard to the *statement* which she had written, that it had come about in this way. She had asked me, as soon as I had informed her of the letter that I had written through Mr. Bowen; she had asked me immediately to send for Mr. Beecher, and to hold an interview with him in her sick chamber, that she might hear me say to him that the letter should be withdrawn—that is the Bowen letter—that she might hear with her own ears, immediately, and before he should have any time to be troubled about it."

What an extraordinary proposition of a woman caught in



adultery—desiring her husband to send for the paramour, and tell him, in her presence, that that letter must not worry him; and to do it quick, so that the paramour need not be troubled about it! Well, that did not strike Tilton as at all unsuitable, in itself, so far as the object and subject went, for that was the object of his interview—his interview with Beecher.

“That though I had joined with Mr. Bowen in demanding Mr. Beecher’s retirement from the pulpit, for my wife’s sake and for the word of honor which I had pledged to her to do Mr. Beecher no harm, that I should send for him, and that she should hear me, immediately and without delay, take back that letter and assure Mr. Beecher that I would not unite with Mr. Bowen in making any assault upon him or in demanding him to quit the pulpit or the city. I told Mr. Beecher furthermore that I had refused to acquiesce in Mrs. Tilton’s request that such a personal interview should be held between him and me in my wife’s sick chamber; I told him that she had insisted four or five times on this very thing, that Mr. Beecher should be saved from being worried about this letter that had been delivered to him, until finally she begged me to be the bearer of a letter to him; that I had then declined that; that finally she asked me if I could not devise some method which would not be humiliating to my pride to have an interview with him—a friendly interview—as friendly as possible” (he corrects himself), “and, after thinking the matter over, that I had said to her that if she would agree I would request Mr. Moulton to bring about such an interview between Mr. Beecher and myself. She said she was only too happy to hear me say so, and she wrote a statement, to which I have referred, to be the basis of an interview between Mr. Beecher and myself, which Mr. Moulton should bring about, and she wrote it on the 29th of December.”

Mr. Evarts intervenes again:

Q. Is this what you told Mr. Beecher? A. Yes, sir. Toward the close of the story I again reminded him of the object for which I had sent for him, which object was that though I had communicated to him through Bowen a demand for his retirement from the pulpit, yet that at my wife’s earnest entreaty I revoked that de-

mand, and for my wife's sake, and not for my own, I pledged him my word that I would not assist Mr. Bowen in the hostility which he had meditated against Mr. Beecher."

Mr. Beecher did not ask for his friendship, for his coöperation, for his espousal of his cause against Bowen. Mr. Beecher had not shown any fear of Bowen or the need of any fortification or protection against Mr. Bowen; and this husband, after introducing the narrative that his object was to get rid of any injurious feeling that Mr. Beecher might have by reason of his having sent that challenge of the 26th, closed it by volunteering to say, "Now the object of all this Mr. Beecher, is to have you understand that, though I did send that challenge which I now have revoked, I am not going to coöperate with Mr. Bowen in any of his movements against you," and I pledged him my word, without his asking it, that I would not assist Mr. Bowen in the hostility which he had meditated against Mr. Beecher.

Now, gentlemen, that about ends the narrative.

This you are soberly asked to believe as a just statement of a communication between husband and wife, and of a communication between the husband and the paramour. I will venture to say that whether you regard that portion of it which undertakes to produce a woman's treatment to her husband, or a husband's treatment to the paramour; whether you undertake to weigh and estimate the manner in which a good woman is led away, or the length and breadth, the weight and value of the argument by which a woman's virtue is overcome by the tongue of man, it is the veriest trash that was ever written or printed. There is not a novelist that would not be ridiculed from Dan to Beersheba, if, wicked in purpose and wilful in malice against the good principles and conduct of society, he had used his art to make adultery easy and palatable and pious. Why, gentlemen, the merest trifle of the yellow-covered literature of Paris or New York that is made for the coarse appetites and for the coarse

intelligence and for the vile morality of the evil classes has not anything as bad and vulgar and pointless as all this trash. And what is the reason of this invention? It is because on the conduct of the people, their characters, on the wife's intellectual and moral character, as still sworn to (it is impossible to be believed unless it is immaculate), because under all the conditions of external observation to which they have been subjected there could be no reliance upon the contact of the body ever having taken place, except by this fictitious presentation of it, to carry a sort of notion with you that there has been some proof of it as coming from somebody who saw and knew it.

Why, gentlemen, what sort of adultery is that which is no contact of the body and no pollution of the soul? Call it unilateral adultery! Why is it adultery? It is wholly transcendental. It begins nowhere, ends nowhere, rests upon no basis.

But "transcendental" is a long word, and those who use it most cannot give any very precise definition of it. Twenty-five years ago it came into great vogue under the lead of a great thinker now famous, Mr. Emerson, and got into the language of young women and of young students, and the clergymen talked about it, but still the question was what "transcendental" meant. Well, on one of the Mississippi River steamboats, when a parcel of eminent divines were returning from a general convention of the Presbyterian Church, they were in a high discussion about orthodoxy, and the old faith and transcendentalism, and a layman who enjoyed their conversation, one of the lay delegates returning with them, still felt a little puzzled about what "transcendental" and "transcendentalism" meant. So he ventured to ask the divine in whom he had the greatest confidence—"I hear you use this word 'transcendental' and 'transcendentalism,'" now, what does it mean?" "Well," says the doctor of divinity, "that is a question that is more easily

asked than answered." But they were passing by a bluff on the river. Says he, "Do you see that bluff here on the river?" "Yes." "Do you see how pierced it is with swallows' holes?" "Yes, I see that." "Well, now," says the clergyman, "you take away all the bluff and leave nothing but swallows' holes, and that is 'transcendentalism.'"

Now, you understand what transcendental adultery is. Take away pollution of the soul, prostitution of intellect, defilement of body, and that is transcendental adultery. Nothing but the swallows' holes left; nothing of the earth, earthy; all transcendental.

Now, gentlemen, let us see what invention is used here. After the cross-examination, on the redirect, my learned friends thought it would be worth while for Mr. Tilton to explain a little what he means by this notion that his wife was so pure, and never violated her marriage vows, and all that he had been swearing to, and they asked him if he couldn't give us a little information, the same as this layman wanted of the doctor of divinity about transcendentalism. It was a pretty long question by Mr. Fullerton, and Mr. Tilton's first answer is, "Well, Sir, that is a sad question." "Well?" says his examiner, and Mr. Tilton proceeds:

"I can answer only my own judgments of her behavior, not for other people's opinions. You must remember, Sir, that I knew Elizabeth when I was ten years old; that I became her confessed lover at sixteen; that I was married to her at twenty; and that, for fifteen years of her married life, I held her in my reverence perhaps almost to the point of making her an idol of my worship."

The idols are spoken of, you know, in the Scriptures as lying gods, and he has written to her a letter telling her that if she continued to lie he should not ideally worship her. He proceeds:

"And when she came to her downfall, it was the necessity of my own heart—"

That was not Elizabeth's narrative, then, that she had told him, how she had preserved her purity and merely lost her matronage—

"It was the necessity of my own heart—I must find some excuse for her; other people might blame, but I must pardon her. I found that excuse in the fact that she had been wrapped up in her religious teacher and guide; she had surrendered her convictions to him; she followed his beck and lead trustingly; she would go after him like one blinded."

That is the reason, I suppose, she went up to his house.

"I think she sinned her sin as one in a trance."

So my idea that she had been carried from Livingston-st. to Columbia Heights in her sleep was not so much out of the way, after all. Her husband thought she had done it all in a trance.

"I don't think she was a free agent. I think she would have done his bidding if, like the heathen priest in the Hindoo-land, he had bade her fling her child into the Ganges or cast herself under the Juggernaut. That was *my* excuse for Elizabeth."

Good Heavens! We had supposed that this was Elizabeth's narrative that she had detailed to you, and that you had repeated to Mr. Beecher. Now, gentlemen, that shows you where all this talk came from. Then, after some discussion between us, the matter comes back in this way:

"Well, go on and answer the question, Mr. Tilton. In what way did she maintain her innocence in the presence of her mother?"

By way of showing her guilt they introduce evidence of her innocence.

"She always used to say, Sir, she was not to be judged, either by her mother or by me, but by God. She believed God would judge her tenderly. She said she loved God, and she didn't believe that God would have permitted her to enter into those relations if they had been sinful."



So you see the last consummation of impiety coming from Mr. Tilton's lips, for we don't know that it ever came from anybody else's—is that God was responsible for this!

“She didn't believe God would have permitted her to enter into those relations if they had been sinful.”

She thought God was mistaken in propounding the Seventh Commandment from Mount Sinai.

“And she said particularly that neither her mother nor I had made it the business of our lives to understand what was right and wrong as Mr. Beecher did; that Mr. Beecher was a clergyman; that he was a great and holy man; that he had repeatedly assured her that their relationship was not sinful, and she didn't see how it could be sinful; that he had told her that love had various expressions; that one expression was the shake of the hand, another expression was the kiss of the lips, another was sexual intercourse, and it made very little difference what the expression was. If that love was right, the love itself made rightful or justified by the various expressions of it, and that she believed before God that her love for Mr. Beecher was right, and therefore she didn't see how any of the various expressions of it could be sinful. She said she rested on Mr. Beecher's authority for that, that he had told her so over and over again.”

Well, well, gentlemen, that is Mr. Tilton's mode of overthrowing the Decalogue and defending adultery. It is as old as any of the falsehoods of the devil; it is as shallow and contemptible as any of the silly efforts of a country clown to overcome the instinctive virtue of an honest milkmaid; and the milkmaids have slapped the clowns' faces ever since the world began, when they have approached them with any such folly as that. But it is for the conspicuous clergyman, that deals not in abstractions, not in dogmas, but in practical faith, by works of morality, of charity, of duty, of the elevation and beatification of life, it is for him to have uttered all this driveling and contemptible nonsense in the ear of a woman who, besides the instincts of chastity as great as any

woman ever had, her husband says, had been educated into the very saintliness of heart, and accompanied it with practical charity for the erring and the fallen—a woman that had an intellect that made her the companion of all the literary and moral studies and pursuits and speculations of her husband, and who had the companionship of all the eminent men that made up the circle of his friendships—it was for him to utter this and for her to yield, and without a consciousness of sin or a violation of conscience, to what the milkmaid throws in the face of the booby that talks to her!

Now, gentlemen, when the necessary case of this plaintiff requires that he should propitiate your understandings and obtain your verdict to a particular fact that has no external proof whatever, and that you know violates all that the intellect, the morality, the instincts of all our elevated, Christianized, as well as natural characters demand in conduct, to ask you to accept this story is to ask you to make yourselves accomplices of this frivolity, and to be as great boobies as he displays himself in your presence to be. Why, gentlemen, from Indianapolis down, Mr. Beecher has been a preacher of active and actual beneficence; has been a condemner of all the wicked passions, all the sensual indulgences, of all the coarse and vulgar sins. My learned brother, Morris, who does not lack a flow of invective and contumely, when his cause required it, could not make out a sufficient volume of imputation and of condemnation without quoting against this defendant a long and eloquent, vehement, living invective against the sin of incontinency that he had delivered years ago to young men, and that has done more to save young men throughout this country than any utterances of any other mouth in it.

Ah! gentlemen, my learned friends can gain nothing over us in the scourging that they will administer to Mr. Beecher, if they will only prove him guilty. If they ask us to go one mile with them in their invective against him, proved guilty,

we will go with them twain. If they ask us to strip him of the cloak of his hypocrisy, we will tear the coat and every fragment of his clothing from him. If they ask us, and they prove him guilty, that he should be smitten on one cheek, we will turn the other to them, and deliver up his whole body to be beaten with many stripes. But we do require that, driven from external evidence, and groping in the region of moral evidence, they will at least show us the moral evidence that carries down into this severity of punishment so great and noble a character as, but for this imputation, and until it is proved, this defendant has shown to all the world.

Now, gentlemen, before I proceed any further it is but fair that I should lay before you Mr. Beecher's account of the interview, and you will see whether any violence is done in that to the great lines of human character, or the particular lineaments in the character of these individuals that is demanded for belief in the plaintiff's story. I pass over everything except the interview itself. When Mr. Moulton had brought Mr. Beecher to his, Mr. Moulton's house, Mr. Moulton said:

"Mr. Tilton is in the room above the parlor, front room, waiting for you." I said to him—wishing a witness, believing that we were going to have a business discussion—I said to him, "I would rather you would go up with me, Mr. Moulton." He said, "You had better see Mr. Tilton alone."

Now, Mr. Moulton, on his rebuttal, I believe, says that that was not said; but these incidental differences of statement come to nothing. We go for the substance of things.

He (Mr. Tilton) pointed to a chair and asked me to sit down, which I did, near the door. He drew out from his pocket a little paper, very much that shape (producing a piece of paper about five inches by three), just about that size, a little narrower, and, on sitting down, said: "I have requested," or "I have summoned you," I think he said, "to this interview on matters of importance.

I suppose that you received from me, by Mr. Bowen, a letter demanding your resignation and departure from Brooklyn." "Yes," I told him "I had received it."

So they agree that that was the topic. Mr. Beecher proceeds:

He said, "I wish now to recall that letter, and I wish you to consider it as not written. It was a grand thing to write that letter; it would have been grander if I had not."

Now, what a happy condition a man is in when whatever he does is grand, and if he hadn't done it it would have been grander. I have never known such elevation in this life before. Whatever you do is sure to be grand, but if you hadn't done it it would have been grander! Well, Mr. Beecher says:

He then began to allude to Mr. Bowen, the bearer of that letter, and to Mr. Bowen's treatment of him, not going into it in any considerable detail, but characterizing it as very base and treacherous. He then charged me with having an understanding with Mr. Bowen in these matters, and furthering them—I am not using his language, but only the substance of the things urged upon me by him—that I had accepted injurious stories of him, and that I had reported them again, that I had advised against him, and much more to that purport, which I cannot recall in detail. I think at this point I was disposed to make some explanation, when he warned me to be silent, and I was silent. And then he proceeded to say that I had not only injured him in his business relations and in his reputation and prospects, but that I had also insinuated myself into his family, and under a cover of friendship I had wrought him a worse mischief there. He said that I had in a sense superseded him, and taken his place, so that in matters of religious doctrine, and in matters of bringing up his children, and of the household, his wife looked to me rather than him; that I had caused her to transfer her affections from him in an inordinate measure; that in consequence of the conditions which had sprung up by reason of my conduct, his family had well nigh been destroyed; that I had suffered my wife and his mother-in-law to conspire for the separation of the family;—

And I have shown you, gentlemen, Mr. Tilton's charge that that was a conspiracy of Mrs. Beecher and Mrs. Morse—

“that I had corrupted Elizabeth, teaching her to lie, to deceive him, and hide under fair appearances her friendship for me; that he had married her one of the simplest and purest women he ever knew, and that under my influence she had become deceitful and untrustworthy. He said that I, that had tied the knot in the sanctuary of God, by which they were to be bound together in an inseparable love, had also reached out my hand to untie that knot, and to loose them one from the other. He then went on to say that not only had I done this, but that I had made overtures to her of an improper character; and again I expressed some surprise, probably by my attitude—I don't recollect that I talked—but he drew from his pocket a strip of paper about like that (describing it), and read to me what purported to be a statement of his wife to him that Mr. Beecher had solicited her to become his wife, to all the intents and purposes which were signified by that term, or substantially that. He said the statement which he had just read—very recently;—she had done it the day before, on the 29th, after the Bowen trouble needed some assistance and aid; that he had for shame and for pride's sake burned up the original, and that now he would tear up the only copy that there was in existence, that there should never be a line or letter against the reputation of his wife; and with that he took the fragments in his hand and stepped to the side of the room and threw them down. “And now,” said he, turning to me, “I wish you to verify these charges by going down and seeing Elizabeth yourself; she is waiting for you at my house.” I said—that last blow staggered me—reading something in his wife's name—I said to him; “Mr. Tilton, this is a dream. She never could have made in writing a statement so untrue.” Said he, “It is but a few blocks off; go down to her yourself.” I turned and went out of the door, and walked down stairs, meeting Mr. Moulton at the foot of the stairs. He said to me—without a word from Mr. Beecher—“he took his hat and overcoat”—at any rate, he went out.

Q. Did you in any manner invite Mr. Moulton to go with you to Mrs. Tilton's? A. No, sir; I didn't want him.



*Q.* Did you in any manner inform him before he asked you whether you were going to Mrs. Tilton's, that you were going there? *A.* I did not.

*Q.* Now, he attended you to the door, did he? *A.* He did, and he went in.

Now, gentlemen, before I go to the interview with Mrs. Tilton at the house of Mr. Tilton, I want to bring your attention to the part of Mr. Tilton's testimony that has to do with this matter, so that his own story may be told. Now, after Mr. Tilton's statement of what he said to Mr. Beecher, Mr. Tilton says:

At the close of the narrative Mr. Beecher sat in his chair, and I thought he was about to speak. I waited a moment. His face and his head and his neck were bloodred, and I feared for the moment that there would be some accident to him. He burst out with these words: "Theodore, I am in a dream; this is Dante's Inferno."

And that is the way Mr. Tilton tries to cover up with a classical reference what was his real statement—"This is all a dream." Ah, Mr. Tilton told Mr. Moulton that night, when Mr. Moulton came back from accompanying Mr. Beecher down to Mrs. Tilton's, that what Mr. Beecher did say was, "Theodore, this is all a dream." It was not anything about Dante's "Inferno" then. But Mr. Tilton told another man, only three days afterward, what it was Mr. Beecher said when he had got through with his, Tilton's narrative to him, and mark how it concurs. He gave on the 2nd day of January, to his friend Storrs, a narrative of how the matter went on between him and Mr. Beecher. He told him how he had sent for Mr. Beecher to Mr. Moulton's house, and that Mr. Beecher came there, and when he came there he made this charge against him of improper propositions to his wife, and he said Mr. Beecher seemed to be astonished, and said that could not be so, and Mr. Tilton made a motion as though he was taking something out of his

pocket, and said—that is, he made it when he was talking with Mr. Storrs, suiting the gesture to the word:

‘I took out a piece of paper’; I forget whether he said he read it or gave it to Mr. Beecher to read, and he said Mr. Beecher seemed surprised and said that could not be so because it was not true.

Two days after, having said that night that all that Mr. Beecher said was, “This is all a dream,” he told his friend Storrs exactly what Mr. Beecher had said, and then he goes on to tell Mr. Storrs what Tilton had said to Mr. Beecher,—that he had said that Elizabeth could not have said so, because it was not true, and then Mr. Tilton says to Mr. Storrs that he said to Mr. Beecher: “Well, if you don’t believe it, go and ask Elizabeth”; and he said that Mr. Beecher did go and see his wife, and got from her a retraction that there never had been any improper proposals, “and when I found it out I was very angry, and told Mr. Moulton, and he was very angry.”

Well, I have no doubt that he was angry that he had got into the same position with Mr. Beecher by the result of that night’s accusation, and Mr. Beecher facing it, that he had got into on the preceding Monday, the 26th, in respect to his missive sent through Mr. Bowen. Ah! gentlemen, when you undertake to assassinate a man in a dark alley, and the man is unwounded, and all that has happened is that there is evidence of an attempt to assassinate him, you have not gained much by that movement; and when this second weapon of assassination, sharpened on the 29th, had been used to pierce Mr. Beecher’s breast on the night of the 30th, and all that he had said was, “Theodore this is all a dream; Elizabeth cannot have said so, because it is not true”; and this man, thinking that he could hold his wife’s heart-strings at least for a single night, says to him, “If you doubt it, go and ask her”; and he goes and asks her, and brings back the evidence that the husband has forged, through the unwilling hand of the wife, a false accusation that has been

withdrawn, he doesn't feel, when he finds it out, that he has made any more by that second attempt at assassination than he had by the first.

Now, gentlemen, we may as well fix this. He told Mr. Belcher in 1872 that he had had an interview with Mr. Beecher at Mr. Moulton's house, and that at that interview he charged Mr. Beecher with the act, and read him this letter, Mrs. Tilton's letter—that is, the letter of improper solicitations.

I then asked him how Mr. Beecher acted on that occasion. He said he was astonished and confounded, and said that it was false, and that the woman must be crazy.

And now, gentlemen, I have, under the hand of this plaintiff himself, a narrative. Under Mr. Tilton's own hand, in the "True Story," he says:

As a further statement, still more unwillingly opened, yet necessary to an explanation of the subsequent complication of circumstances, I must say that in the summer of 1870, a few months after I had undertaken, in addition to editing *The Independent*, to edit also *The Brooklyn Union*, Mrs. Elizabeth Tilton, my wife, made to me a communication concerning Mr. Beecher—

not a confession; exactly what I have shown you out of his own lips was the truth, that she had made him a statement, in his judgment and in hers, as she told the story to him that night, only in the third person—

a communication concerning Mr. Beecher, which (to use her own words, lest I wrong him by using mine) she afterward noted down in a memorandum as follows: "Mr. Henry Ward Beecher, my friend and pastor, solicited me to be a wife to him, together with all that this implies." I borrow the above facts from my wife's handwriting, and forbid myself from pausing at this point either to blacken it with an epithet, or to lighten it with an explanation.

Now, that was read to Mr. Beecher, and on Friday evening, as Mrs. Tilton's statement:

December 30.—I went to Mr. Moulton's house. Mr. Moulton went after Mr. Beecher and brought him. This was early in the evening, Mr. Beecher leaving his prayer-meeting, usual on that night, to go without his leadership. My interview was with Mr. Beecher alone. I read to him my wife's letter, and said to him what I shall not here repeat. He sat like a statue under my brief remarks—(three columns of a newspaper we have here, and Mr. Beecher's narrative comprises it within, within one column)—my brief remarks, and at the close he bowed to me and said, "this is all a dream." He affected to disbelieve that Mrs. Tilton had written the letter, and denied everything with a royal negative. I then said, "It is but a few squares to my house; and ask Mrs. Tilton for yourself whether or not she wrote the letter." He went and returned in half an hour. I did not see him.

Now, he read this note to Mr. Belcher:

Mr. Tilton came too, and read me what purported to be a note from his wife, a letter from his wife to him, in which he stated Mr. Beecher had made a proposition to her, during Mr. Tilton's absence to become a wife to him, and all that that implied; and I said to Mr. Tilton when he read me that paper, "Is that paper in Mrs. Tilton's handwriting?" and he said, "No, it is a copy." I asked where the original was, and he said Frank Moulton had it.

Now, I want to read you, under the light of those actual statements, by Mr. Tilton to witnesses, when the thing was fresh in his mind, and under the light of his former statement, under the light of what he characterized as a story that should put the thing right, what he now says when he wishes to put a somewhat different view of the visit of Mr. Beecher to Mrs. Tilton; he says after his saying "this is all a dream"—after Mr. Beecher saying that, that he (Tilton) said to him:

"You are free to retire." He rose and walked towards the door, as if he were going out, without saying a word. Then he suddenly turned, and, looking me in the face, he said, "May I go once again, and for the last time, to see Elizabeth?" I instantly answered "No," and then "Yes."

And then he says he can tell why he did that, and he is allowed to. Then he goes on to state what he farther said, and does not give his reasons:

"But in going to see Elizabeth, see to it, sir, that you do not chide her for the confession that she has made. She is at home sick, broken-hearted. I charge you that you visit upon her no reproach for confessing to her husband; or, if you smite her with a word, I will smite you in a tenfold degree. I have hitherto spared your life when I had power to destroy it. I spare it now for Elizabeth's sake; but if you reproach her I will smite your name before all the world."

Now, on the cross-examination I got out of him a very clear concurrence with Mr. Beecher and with his own record in the "True Story," and with his own present fresh recollection, as he gave it to Mr. Storrs two days afterward. I said to him:

Now, Mr. Tilton, do you remember Mr. Beecher expressing a doubt as to whether Mrs. Tilton had written any such paper? A. No, sir; he never intimated any such thing.

Q. You are quite sure of that? A. No, sir; I am quite certain.

Q. Now, don't you remember that on an expression of doubt or surprise concerning Mrs. Tilton having written any such papers that—and I stopped—you had no original before you? A. No, sir.

He had not anything in her handwriting that he could show Mr. Beecher that she had written; he didn't mean to have, as I will show you when I comment upon the planned arrangement. I then said to him:

Now, don't you remember that on an expression of doubt or surprise concerning Mrs. Tilton's having written any such paper as that, you then said to him, "It is but a few squares to my house; go and ask Mrs. Tilton for yourself whether or not she wrote that letter," and his answer is: "Ah, but that was my suggestion, and not his."



Gentlemen, there is some virtue in cross-examination.

In answer to an expression that you describe as surprise, did you say, 'It is but a few squares to my house; go and ask Mrs. Tilton for yourself whether or not she wrote that letter?' *A.* Well, I may, perhaps, have used some such expression as that; I don't remember, but it was not in reference to any doubt.

*Q.* Well, no matter, you used the expression? *A.* But only as to surprise.

*Q.* Now, thereupon, did he indicate a purpose of going?

Did anything happen that made him think he was going? Mr. Tilton had made that suggestion to him.

*Q.* Now, thereupon, did he indicate a purpose of going? *A.* He went staggering down stairs.

*Q.* Did he indicate to you a purpose of going to your house? *A.* No, sir; he didn't say anything on the subject that I remember now.

*Q.* Didn't you know that he was going to your house then? *A.* I presumed he would go; I don't remember that he said he was going.

*Q.* I ask you if he didn't indicate to you, so that you understood him, that he was going then and there to your house? and finally the answer is: He and Moulton went out together, and I understood they went to my house, and afterwards I learned that they did so.

#### FIFTH DAY, JUNE 3, 1875

As you have no doubt, gentlemen, upon the absolute certainty and the voluminous concurrence of the evidence, what the slip of paper that was in the possession of Mr. Tilton that night, and from which he read to Mr. Beecher, was, I now wish to ask your attention to its character, as comporting with the interview in the version that Mr. Tilton has given of it. Mr. Beecher has told you what it contained; he heard it read. Mr. Tilton and Mr. Moulton on being recalled, have not either of them given you a different statement of what it contained. Mr. Tilton is asked

the negative, "Was it so?" and he says, "No, quite a different statement;" but what the different statement was he did not tell you; and Mr. Moulton had had the copy—that is, the original, for it was only the copy that Mr. Tilton had—had had the original in his possession from the 30th of December, 1870, to immediately after the "Tripartite Agreement," in April, 1872, and he had opportunities enough, and firmness of memory enough, to reproduce that little slip of paper, in its contents, after that long period of meditation and examination of it. He could tell you word for word the speech that Mr. Tilton made when he introduced Victoria Woodhull to the good graces of a New York audience, although he had never looked at any report of it since. He could do that. Now, it was vastly important for this prosecution to show this paper to have been something different from what Mr. Beecher's memory gave it, from what the "True Story" gave it, from what Mr. Tilton's statement to Mr. Charles Storrs, two days afterwards, gave it, from what he gave it in subsequent interviews in 1872, to Mr. Southwick, to Mr. Schultz, to Mr. Harman, and Mr. McKelway. Why didn't they do it? Did any scruples of accommodation, or invention of evidence, restrain them? It is vital to their case. Without a contradiction of this paper and its contents, without a substitution, in your acceptance, and in the truth, upon accredited evidence, that it was something else, their case is gone. Ah, gentlemen, if they had sworn to a different reading of that paper, it would have been willful, deliberate, and conscious statement, and there was too much of written and recorded evidence, as well as the oaths of numerous witnesses, to repel the substitution; and the lips of these men have not been opened and never will be opened, to substitute new reading for that paper.

Now, gentlemen, that being the character of the wife's accusation, that Mr. Beecher had proposed to her to be a

wife to him with all that that implies, you will see how utterly it is at variance with the long narrative of seduction, of adultery, of prostitution, and of justification of prostitution, that he has delivered in your hearing. Where would you put it, a wife's confirmation, that Mr. Beecher's attention even may be drawn? Would you put it as a climax after that long narrative, that in addition to all this, all this adultery, "Mr. Beecher has proposed to me to be everything to him that a wife is;" indecent propositions as a climax to the history of sixteen months' adultery. Now, where did this slip of paper come in? Mr. Tilton in his direct examination, would start off, as it were, in that part of his interview that took up his grievance after he had got through with the conciliation of Mr. Beecher, and with the vituperation of Mr. Bowen, as if this slip might have been—and you would perhaps naturally infer that it was—the mode in which he introduced his narrative of his wife's affairs. But on the cross examination I called attention to this question of stage and relation to the narrative. I ask him:

Had you this memorandum before you, made as you have now stated, when you went on with this discourse with him that you have given? *A.* I cannot say it was a discourse.

*Q.* Well, address? *A.* No, sir; it was not an address; it was a statement.

*Q.* Well, a statement to him? *A.* Yes, sir.

*Q.* It was interrupted by him, was it? *A.* I remember his making a little attempt to interrupt at one time, and I told him to hear me to the end; there was practically no interruption on his part.

*Q.* What form of demonstration did you recognize as an attempt to interrupt you? *A.* I thought he was going to speak.

*Q.* He made a motion as if he was going to speak? *A.* I don't distinctly remember it.

*Q.* Something you treated as a purpose of speaking? *A.* Yes, sir.

*Q.* At what stage of your statement was that purpose inter-

rupted; do you remember? *A.* I think it was at the conclusion of my reading Mrs. Tilton's confession.

*Q.* This little paper which you had on that table? *A.* Yes, sir; that is my present recollection.

*Q.* Did you read that at the outset of your statement to him? *A.* I read that; it was not the first of the interview; the first part of the interview, as I remember, was my reference to his having received a letter.

*Q.* Oh, well, I agree; but after you got through that, after you had got upon the matter of his relations with your wife, was the reading of the paper the first thing that was done? *A.* I don't remember whether that was at the very beginning, or whether it was somewhere in its proper place in the narrative; that I do not recall at the present moment. . . .

*Q.* Then how did you arrest that purpose? *A.* I said, "Hear me to the end."

*Q.* Now, do you remember Mr. Beecher expressing a doubt, or intimating a doubt, as to whether Mrs. Tilton had written any such paper?

And then we go on with what I repeated to you yesterday, and he admits that it was a surprise, and that thereupon, on that intimation of surprise at the paper, he said to him:

It is but a few squares to my house. Go and ask Mrs. Tilton yourself whether or not she wrote that letter.

Now, gentlemen, that shows you that on his own reproduction of this interview he brought this paper in as the climax and clincher, the height, the front of his charges, led up to by what had gone before, and this the damning proof, as well as imputation upon what he expected to touch the conscience and humiliate the pride, by this exposure of the unlawful purposes of Mr. Beecher. Now, what sort of a climax was that for his narrative? But see how excellently it fits into Mr. Beecher's narrative of how the charge, and course of relations with his family, was presented by Mr. Tilton to Mr. Beecher, upon that. I won't repeat the whole inter-

view, but only its heads, after he came upon the subjects of his family:

It was about the Bowen matters; advising against him; saying that I had not only injured him in his business, in his reputation and prospects, but had insinuated myself into his family, superseded him, taken his place; in matters of religious doctrine, bringing up the children, the household, his wife looked to me rather than to him; caused her to transfer her affections in an inordinate measure; that in consequence of the difference which had sprung up by reason of my conduct, his family had been well-nigh destroyed; I had suffered my wife and his mother-in-law to conspire for the separation of the family; that I had corrupted Elizabeth, teaching her to lie, to deceive; and he went on to say that not only had I done this, but that I had made overtures to her of an improper character; and again I expressed some surprise (exactly what Tilton says); he drew the paper and read it, and then it was, turning to me, he said, "I wish you to verify these charges by going down and seeing Elizabeth yourself; she is waiting for you at my house."

Was there ever a more conclusive test of what the course, what the measure, what the length, the breadth, the severity, of the imputations against Mr. Beecher were, when you have permanently, wholly unequivocal, and wholly indisputable evidence of what the written climax was. Proof can go no further. This fiction that I have read to you, so contemptible and frivolous in itself, is utterly knocked in the head by this firm feature of the evidence that is produced before you, and is shown to have been the climax which arrested Mr. Beecher's attention, which struck him with surprise; for all the rhetorical and inflated propositions which, on Mr. Beecher's statement, Mr. Tilton had given him, of interference with his family and conspiracy of his wife and Mrs. Morse, and all those things, produced no serious impression upon him then. He considered them the exaggerations, perhaps the honest imputations, of a man placed in a most distressing position by his own conduct



toward his family; but they agree that the moment this lady's name was brought in as the sponsor for an imputation, Mr. Beecher, whose respect, whose regard, whose affection toward this lady had been the growth of many years' knowledge of her and association with her, at once produced the impression on him, "Why, this indeed is, as it were, a thunderbolt from a clear sky; this, this is something that a man may well wonder at, if such an imputation as that is made." Well, now take the confessed answer to that: "Elizabeth cannot have said that, because it is not true," and the recognition of the justice of that impression on Mr. Beecher's part, by the husband's concession: "Go and ask her; she will tell you." No, gentlemen, there is no escaping, from your unfailing confidence in the character of this paper, that is displayed in every form of evidence, with no contradiction, no substitution, with a destruction of it by the parties that never could have faced it in Court one moment, and kept their footing before this jury.

Now, gentlemen, before I advert any more fully to the magnitude of this evidence in regard to this paper and its final blow to the pretensions of an accusation of immorality beyond that, I will go with you to the interview that, on the suggestion and invitation of Mr. Tilton, took place between Mr. Beecher and his wife. Whatever criticism there may be as to there being any diversity of form and circumstance and words in which this interview was brought about, as a consequence of the interview between the husband and the paramour, there can be no doubt whatever that the interview between the adulteress and the paramour, or between the honest wife and the falsely accused, upright clergyman did take place that night, and did take place between them alone, and did take place upon the suggestion or acquiescence of the husband, and when he remained absent from his house—his own home. Now, there is a fact upon which you can repose, and whatever are the just inferences from

that fact you will draw, and you will not be disturbed in your logic and your reason and your responsible deductions by any flimsy or frivolous feelings or views about these particular people. You will judge of this fixed fact and all that led to it, and what occurred during it, and what came after it, according to your knowledge of human character, of human feelings, of human conduct under these grave and pressing circumstances of external relations. Think of it; think of it on Tilton's theory—think of it on the view that your own verdict is expected to sustain, that this man, Mr. Beecher, had, through years of seduction and impure solicitation and fondling, finally triumphed over the bodily chastity of this woman, and defiled and polluted the bed of this plaintiff, the husband, for sixteen months, and that the woman lay almost at the point of doom, sick, sorrowing in her bed, and the husband invites the paramour to visit her in her chamber alone. It was as few steps for him to accompany Mr. Beecher as it was for Mr. Beecher to go. He had seen some unseemliness in bringing about an interview between Mr. Beecher and his wife, this wife and himself, Mr. Tilton, where there was to be only the kindly purposes of saving Mr. Beecher from being worried about the Tilton-Bowen letter that had been sent him. And now he opens his wife's chamber to the visit of the declared, convicted adulterer; for, if there had been a charge, if there had been truth in the charge, if there had been an idea or notion on Tilton's part that there was truth in the charge, he knew the length and breadth, and he either doubted it himself as a dream, or he believed it as one of the most horrid realities that ever confronts mortal man in his experience of life; and he says: "Go down and see Elizabeth." Now, we won't say whether "She is expecting you at the house" be or be not a part of that final arrangement in its expressions. That depends, perhaps, wholly on Mr. Beecher's statement of it, that first, that simple clause.

Take it on any view, and you have an invitation to a paramour from a husband that is wholly inconsistent with human character, would have been as intolerable to the paramour as it should have been to the husband. How would the guilty man have acted under that imputation, and confronted with the confession of the wife? Would he have desired to meet the woman under those circumstances, and to furnish the final proof against himself by the result of that interview, if he had known that he was guilty, known that the wife was guilty, and known that the husband knew they were both guilty? So that, on that mere fact in dispute, you see that it is capable of conciliation with the preceding character of the interview, only by assuming the character that Mr. Beecher gives to the interview, and discarding that that Mr. Tilton now gives to the interview. Only by making it—only by its being compatible with the view of the interview that Tilton gave on the second day after to Mr. Charles Storrs—only as compatible with the statement of the interview as given in the “True Story,” only with the interview as stated to Belcher, and Southwick, and Schultz, and Harman, and McKelway; only with Tilton’s version as stereotyped and preserved in manifold impressions, and as now given in your hearing—with only the credit and guaranty that belongs to his spoken words, when he has determined out of the rankling irritation of his vanity that Dr. Bacon’s witty references to Shakespeare had excited him to carry out what had been a baffled purpose for years, baffled by truth, a purpose to strike Mr. Beecher to the heart, and a final, deliberate weighing of these two alternatives of whether he would submit to the wounded vanity that Dr. Bacon’s goads made wince, or whether he would pull down the temple of his household on the heads of his wife and his children. What abnormal, what monstrous character and nature is this that considers himself driven into a terrible balancing of alternatives whether he shall bear

the jests of Dr. Bacon in his own character and sensibilities, or whether, as he expressed it, he shall smash Elizabeth and ruin the fame of his children! I have never heard of any moral construction in any history that was written to be believed, I have never heard of any narrative of real life, or any philosophy of human character, that pretended to present a sane mind treating these two alternatives of personal irritation, and of final destruction of the happiness of those dear to a man, as making a measuring cast of duty, as to which course he should pursue.

Well, now, gentlemen, when Mr. Beecher goes to the foot of the stairs, Mr. Moulton is there. He knows nothing of what has occurred up-stairs; that is, by having been present, or by having had it reported to him, and whatever consciousness of knowledge he then exhibits of the course of that evening as proposed and planned, he got beforehand in laying out the scheme, and got from Mr. Tilton. And he says to Mr. Beecher, "Are you going down to Mrs. Tilton's?" before Mr. Beecher opens his mouth. How did that get into Mr. Moulton's head? And then, more extraordinary still, when Mr. Beecher answered that he was, Mr. Moulton said, "I will go with you." Well, Mr. Beecher wasn't a stranger in Brooklyn. He knew the way to Mr. Tilton's house, and he was not afraid to walk the streets of Brooklyn at nine o'clock at night, or half-past nine, in this most reputable and orderly portion of it—on the Brooklyn Heights. And how do you account for it that Moulton wanted to accompany Beecher?

Now, let me agree that Mr. Beecher is supposed, or represented, by Mr. Moulton to have said that something may have passed which let him know that Mr. Beecher was going to Mrs. Tilton's, what reason was there for Moulton's going? I will show you the plan of that night after I get through with it; but bear that in mind. They go; and when they reach the door, and the fact is known that Mr.

Beecher has got there, and gone in, and gone directly, and has had no opportunity to speak with, consult with, mediate with, anybody else, Mr. Moulton has discharged his pre-arranged part of that concerted trepanning of Mr. Beecher; and he only asks of him that when he returns he will stop at his house, and Mr. Beecher acquiesces in the suggestion; and Moulton knew he had the word of an honest man, and that Mr. Beecher would do so, and he went there. Mr. Beecher has the door opened for him by the housekeeper, not the servant or maid that attends the door, but this housekeeper, this Miss Dennis that had taken the head of the table and put Mrs. Tilton at the side when she and Bessie Turner had returned from Marietta.

Without inquiry, Mr. Beecher is told that Mrs. Tilton is upstairs in her room and Mr. Beecher will find her there, and he goes up and knocks at the door. The nurse, the monthly nurse, Mrs. Mitchell, opens it from within, and she knows nothing, and is no party to any preconcert, but she knew Mr. Beecher very well, and she knew that a woman, a member of Mr. Beecher's church, sick and sorrowing in the domestic troubles that had been urged upon her in reference to Mr. Tilton's difficulties with Bowen, and his livelihood, was to receive a visit from her pastor, Mr. Beecher, and she needed no explanation concerning the visit of a clergyman to so sick a woman as Mrs. Tilton was, in her esteem, and if it occurred at the hour of nine or half past nine in the evening it was conclusive evidence, instinctively presenting itself to her mind, that the clergyman had been sent for from a recognition of the precarious condition of the patient; and she left the room as every nurse would leave the room, as every member even of a family would leave the room, when the clergyman approaches the sick bed of a parishioner and communicant. Nor had she any fear that the mind of the patient would be ruffled or disturbed, or the duties of protection of health that were confided to her, the nurse, should



interfere with this visit of the clergyman to the bedside. She was a religious woman herself, though not of Mr. Beecher's congregation, and she knew that the peace that comes from the Gospel of Christ at the hands of a pastor does not endanger the nervous system, or expose to excitement a sick woman. And so, during that interview, lasting as it may have done half an hour or an hour, no matter what, or no matter how trustworthy the measures of time that witnesses give about matters that they do not attend to, in that regard she had no uneasiness, and she was justified by the result, for, when hearing the door close after Mr. Beecher as he left the house, she returned to her patient's bedside, she found her entirely tranquil and at ease. Nothing had occurred, gentlemen, in that interview with Mr. Beecher, to disturb the conscience or harass the feelings of Mrs. Tilton, and the nurse tells you that she went to sleep, and then the nurse retired, at her accustomed place by her side, and went to sleep herself.

Ah, what volumes this testimony, acceptable to our own appreciations of what the interview would be if it were comports with the character of Mr. Beecher and Mrs. Tilton, and if it comports with the evidence of Mr. Beecher as to what did actually occur. We all accept the evidence of the nurse as necessarily true, as naturally true, at least, and it speaks volumes as to what the interview was, and whether its results were to quiet the uneasy feelings of a woman that had yielded under the goading pressure of a husband to mend his matters with the world, to put even into the form of a written paper a charge untrue against a man whom she had respected and revered, and how under some sort of reparation, at least some sort of purging of herself from wicked purpose in what she had done, some sort of restoration in the good opinion of this good man, had come from that interview; her mind was at ease; she had repaired her wrong; she had redressed an evil communication that was

false, and well might she sleep by the side of her nurse, in that peace of conscience that had been administered to her, and that her substantially truthful nature had yielded to.

Now, there is but one witness to that interview—Mr. Beecher—and you must determine whether it is true, and it is true as coming from a man of intelligence and of truthfulness so far as all the rest of his character is concerned, and if it is not true it is deliberate and wilful invention and perjury. You must judge,—for it does not need to rest upon his evidence,—whether it is not sustained by the true interpretation of all that passed before and all that followed afterward.

But this is the statement. He found her lying on a bed dressed in pure white.

Mrs. Tilton was dressed in pure white, and her face as white as the bed, lying a little above a level, reclining on pillows, her hands palm to palm on her breast in a very natural way. I drew a chair; I sat down in it.

*Q.* Did she accost you in any way before she spoke? *A.* Not at all; her eyes were closed.

Now, Mr. Beecher's memory was better than Mr. Moulton's. He knew this lady was sick, and he recognized it; and he has produced a picture to you which, besides its extreme pathos and pathetic conformity to truth, shows you that the visit of Mr. Beecher was not unprepared for. The drapery of the couch and the drapery of the sick woman were all arranged in the purity of snow, at that late hour of the day, as in a woman of true feeling would be expected upon the intrusion even of a clergyman:

She was as one dead, and yet she was living. I sat down by her side, and said to her, "Elizabeth, I have just seen your husband, and had a long interview with him. He has been making many statements to me and charges, and he has sent me to you in respect to some of them that you should verify them." I then said, "He has charged me with alienating your affections from him. He has

charged me that I have corrupted your simplicity and your truthfulness. He has charged me with attempting improprieties. . . . Are these things so, Elizabeth?" She—there was the faintest quiver, and tears trickled down her cheek, but no answer. I said to her, "He says that you have charged me, Elizabeth, with making improper advances. Have you stated all these things and made the charges?" And she opened her eyes and said: "My friend, I could not help it." "Couldn't help it, Elizabeth! Why couldn't you help it? You know that these things are not true." "Oh, Mr. Beecher," said she, "I was wearied out; I have been wearied out with his importunities. He made me think that if I would confess love to you it would help him to confess to me his alien affections." "But," I said to her, "Elizabeth, this is a charge of attempting improper things. You know that is not true." "Yes, it is not true," she says, "but what can I do?" "Do! You can take it back again." She hesitated, and I did not understand her hesitation; and he proceeds: "Why can you not take it back? It is not true." She said something about she would be willing to do it, if it could be done without injury to her husband, which I did not at all understand. "But," said I, "you ought to give me a written retraction of that charge." She said she was willing to do anything if I would not use it against her husband. I said, "Give me paper." She pointed to the secretary in the other room, which stood between the windows. I went there; I knew it, and took from the secretary some note paper, pen and ink. I brought them to the bedside. She raised herself up a little and wrote the first part of the retraction. She signed it.

I will read you, gentlemen, what she wrote:

December 30, 1870.

Wearied with importunity and weakened by sickness, I gave a letter inculcating my friend, Henry Ward Beecher, under assurances that that would remove all difficulties between me and my husband. That letter I now revoke. I was persuaded to it, almost forced, when I was in a weakened state of mind. I regret it and recall its statements.

E. R. T.

Then we asked Mr. Beecher:

*Q.* During the writing, Mr. Beecher, did you in any manner dictate or suggest any of the language used? *A.* No, sir; I suggested that she ought—in the beginning I suggested that she ought to make a recall of those charges that should cover them. . . . She read it over herself. She looked it over and then held out her pen for some more ink, which I had in my hand, and added this:

“I desire to say explicitly, Mr. Beecher has never offered any improper solicitations, but has always treated me in a manner becoming a Christian and a gentlemen.

ELIZABETH R. TILTON.”

*Q.* Did you during this conversation, Mr. Beecher, say anything to Mrs. Tilton as to the form and manner in which injury might come to you from this charge? *A.* I did.

*Q.* What was it? *A.* When she spoke as objecting that it would make difficulty between her and her husband, I said to her that there should be no difficulty of that kind, so far as I was concerned, and I desired this in no sense as an offensive thing; some rumor of this might come to mischief-makers, it might get into the church, there might, in the future, be a call upon me, and that I wished something in my possession that in any such exigency as that would be a defense—in substance that. . . . I said to her that it was not an injury to me that she had done, alone; that no woman could make such a statement without injuring herself, and that it would be an injury both to herself and to her children should it be brought out and believed. . . . There was some little conversation further—I spoke some—I am afraid with severity, sometimes; and in the converse preceding, and when I went away, I felt very sorrowful; I was sorry that I had said so, and I said so to her that I hoped my visit would be one for peace, and that it would not be the means of throwing her back in her sickness, and some other kind expressions.

Now, gentlemen, you have an immediate written paper coming from the wife spontaneously on her part, or, if you believe that Mr. Beecher aided or assisted in any degree in the form and manner of the statement, coming from his

recent knowledge of the nature and form and degree of the charge, and you have here, immediately, a note that shows conclusively to the commonest understanding that the charge was of improper solicitations. Why, good heavens! gentlemen, if the charge had been the prostitution of her body and adultery, why would Mr. Beecher or this woman have had this idea in their heads that the gravamen, injurious to Mr. Beecher, was the charge of improper advances, as involving immorality of purpose, equal, so far as intent goes, and desire, to the consummation of the wickedness, if it had not been the charge that over her name had been made at that interview? We do not need to wander far nor compare texts. Against the parties that destroyed the paper, there could be no evidence except its magical restoration from the flames, that could refute and confront their present pretension that it was anything else than a charge of improper solicitations, so absolutely, so immediately, so clearly, as this correction and retraction of the charge; and when she found that the generality of the first part that she had written did not describe the letter so, but that the letter itself would need to be read with the first part, she then saw the deficiency, and added the final words. That she had not said affirmatively before; she had withdrawn the letter but only that, and you would need the letter to know what she had withdrawn, as it then stood, and so, for she never wanted that letter that she had written to see light, she makes the paper complete, adding:

I desire to say explicitly Mr. Beecher has never offered any improper solicitations, but has always treated me in a manner becoming a Christian and a gentleman.

Now, that paper I have read to you was put in evidence by this plaintiff, and being in evidence, his wife's statement brought by him, it reads, according to its natural import, against him by all the laws of evidence; but it was competent for him to falsify the statement of fact concerning himself



that is included in his wife's letter that he produces in evidence, to wit, "Wearied with importunities I gave a letter inculcating my friend Henry Ward Beecher under assurances that that would remove all difficulties between me and my husband; I was persuaded to it, almost forced," and he has not contradicted one word of these imputations against him as to the means and the method by which the first letter was obtained. What do you think of that, gentlemen? It is not the fault of the counsel, that we all know. He guides himself, and he does not always know what is important to deny and what to confess. It stands, then, upon their own evidence, as an extorted accusation against Mr. Beecher, retracted on the first remonstrance, retracted without coercive measures, retracted peacefully and with ease to conscience.

Now, gentlemen, let us see what courts think of women and their confessions (if you please to call this so, but it was an accusation of a third person, Mr. Beecher, not a confession that was extorted). I read from the case of *Derby vs. Derby* in 21 New Jersey Equity, 36:

Where from the facts in the case it was evident that the defendant, the wife, was not a resolute, strongminded woman, but of a yielding, unresisting nature, and on the other hand, that the plaintiff, the husband, was a man of decided will, strong, resolute and violent, who knew the value of energy and violent attitude in overruling more timid minds, and where the wife was summoned into his, the husband's, room to execute a paper which contained a confession of her adultery, and which was in his handwriting, and she was urged by him to sign it, in a room locked up with him alone, *held* that such a written confession, although formally sworn to before an authorized officer, should *have no weight* as evidence of adultery.

JUDGE NEILSON: Mr. Evarts, that was an action for divorce, I believe, was it not?

MR. EVARTS: An action for divorce. Chancellor Zabriskie, one of the most eminent Chancellors of New Jersey,

speaks of this paper that I referred to, and I read from his opinion in the case:

It is the written confession of the defendant herself, and not only signed by her but sworn to before a Master of the Court. It was written and read to her by her husband and again read by the Master before she signed it, and he testifies that he cautioned her against signing or swearing to it if the contents were not true. This confession does not admit her guilt, but admits that she met Palmer on the Dean Richmond by appointment; that Palmer took a stateroom in the name of Mr. Derby (that is her husband), and that they both occupied it during the night.

That is, it does not say that she committed adultery, but it says that she went by appointment with a paramour on a North River boat, and that the paramour took a stateroom in her husband's name and that both occupied it all night.

And these facts are sufficient to sustain the charge of adultery, and while it is possible that a man and a woman of their ages might occupy the same room for a night without guilt, yet the presumption is strong against them, and in this Court it would, unless clearly explained, be always sufficient to sustain the adultery. These facts, if the confession is believed to have been fairly obtained and understandingly made, are sufficient to support it, so that this Court may found its judgment upon it.

These are the facts of assignation, false pretenses of her husband, etc. The Court then has to take up the question of the language of the confession, and says:

The language of the confession, although it does not say, "I committed adultery," says, "I did so and so," and it was read to her and explained to her before the Master, and she signed it and swore to it.

Chancellor Zabriskie seems to understand something of the terrible subjugation of a married woman's will, for he says:

Married women, we know, constantly sign deeds against their judgment and wishes, only to gratify the requisitions of their hus-

bands, and to avoid the discomfort and annoyance which a refusal would cause, and solemnly acknowledge before an officer, on a private examination, that it is done of their own free will. The step taken by Mrs. Derby was only one degree beyond this, and that consisted in this, that she did not only part with property, but acknowledged facts which might disgrace and ruin her for life. But if she did it under the assurances that the facts admitted did not compromise her she might have done so; yet it is an acknowledgment that few women in their senses would have made if not true, and in order to believe it in her case, it is necessary to be first convinced that she was, *by the differences in their nature*, or by circumstances, under the control of her husband. From the facts in the case, the conclusion is unavoidable that she was not a resolute, strong-minded woman, but of a yielding, unresisting nature. She never else could have borne the treatment to which for years she had been subjected by her husband. On the other hand, Derby appears to be a man of decided will, strong, resolute, and violent, and knows the value of energy and violent attitude in overruling more timid minds.

That confession did not convict the wife nor procure a release for the husband from the bonds of matrimony.

In the case of *Curtis vs. Curtis*, in 2 Swaby & Tristram, the wife

made repeated confessions under no other coercion than the fear that her husband, who was unsettled in mind, would get insane if she refused. Held an abundant explanation, and divorce granted in favor of the wife.

Which would have been precluded, if there had been any faith put in confessions thus gained from her. Ah, gentlemen, this institution of marriage, framed in our nature, built up in our civilization, studied, contemplated, understood by the jurisprudence of ages, is a solid and real institution, and for its great benefits, and as a necessary part of life, it carries not only the fact of the wife's subordination to the husband, but of the merciful interpretation of that subordination which sensible, instructed men ever accord in practical

life, and which the judges pronounce from the bench, and the juries confirm by verdicts. Now, gentlemen, you may think that in our advanced civilization, when so much of independence is assumed for women, and so entire equality is accorded to them in feeling and sentiment by their husbands and by the world, that the old rule of the common law interpreting this institution of marriage, by which a wife never was held responsible to the law, or subject to punishment, for any crime committed by her in the presence and under the influence of her husband, was one of those traits of human nature belonging to ruder ages and to past times; but, gentlemen, in our Court of Appeals and in the highest tribunals of England, within the last few years, there is an explicit recognition of these principles. Let me read you a case, "Michael Tarpley"—this was in the year 1871, was it not, Mr. Abbot?

MR. ABBOT: Yes.

MR. EVARTS: In London, Michael Tarpley, giving the name of Terrill, applied to a jeweler, representing that he wished to make a gift to his wife, and induced the jeweler to send by a clerk a quantity of diamond ornaments to a house in a highly respectable neighborhood in London, which he (Tarpley) had rented shortly before the transaction, and immediately after the transaction vacated. The house door was opened to the shopman by Michael Tarpley, and he excused to the shopman the absence of the servant, who, it appears, had been sent on an errand to a fictitious person by Michael Tarpley's wife, Martha. When the wares had been displayed to Michael Tarpley and his wife, Michael sent his wife from the room, ostensibly to call her sister, who, however, if there really were such a person, seems not to have been in the house. The wife left the room, but presently returned, saying her sister would come, and then stepping quickly behind the shopman (that is, the wife), she placed a handkerchief saturated with something over his mouth,

Michael Tarpley seizing him by the throat, and the woman, for an instant shaken off, again applying the handkerchief to his face. The shopman, after an interval of unconsciousness, discovered himself bound with straps. Michael Tarpley then stood over him, threatened him, and blindfolded his eyes. The shopman then heard Michael say, "Quick, Lucy, bring my hat," and heard him leave the room, etc. Michael escaped arrest. The woman was arrested and tried for that robbery, and she was acquitted by the judgment of the English law because what she had done she had done in the presence and presumedly under the power of her husband; and, although they had disputations afterward in the House of Lords as to whether that presumption should have that degree of force or there should be some additional evidence beyond presence, of power exercised at the moment, yet that stands as the most recent inquiry into the English law on this subject, and the Parliament of England, with that example before it, and the subject called to its attention, has not altered the law, but has refused to do so.

Now, gentlemen, you understand how it is that this law of ours, which is not a tyrant, which is not merciless, which does not delight in destruction, but protects innocence, how this law of ours appreciates the situation of a woman toward her husband. Ah, gentlemen, and you now see the wisdom of our law in not permitting even this great interest of justice to interfere with the institution of marriage by allowing wives to testify for their husbands against others, because the principles of human nature do not permit the interests of others to be exposed to the power of the husband in procuring a wife's oath. And they do not allow her to testify *against* her husband, because the law, that makes marriage what it is, and refuses release from it except upon grounds incompatible with its endurance and its usefulness as an institution, does not subject wives to be overpowered, and their fidelity to truth brought into that terrible choice, between fidelity to an



oath and fidelity to a husband; between swearing, not with their lives in their hands, because death is nothing compared with the torments and oppressions which through the following life will crush and degrade the spirit and make wretched the life of a woman that has chosen in that sad alternative, to swear to the truth against her husband; the law does not give her a divorce from that misery; the law leaves her to lie in his bosom, to sit at his table, to watch him in sickness, to adhere to him by necessity, and it does not tear assunder human nature by divided allegiance to two great institutions which society rests upon, and both of which it must sustain; and it solves the question by determining that neither shall the interests of third persons be affected by the concurring oath of the wife with the husband, nor the wife's life and the institution of marriage be disconcerted and broken by a choice between divided allegiance. Society chooses for her and says: "You are the wife, and public justice shall not place you on the witness-stand."

Now, if your honor please, to see what our own courts say on this great question of husband and wife, I read now from the case of *Cassin vs. Delaney*, in the 1st of Daly's Common Pleas Reports, page 225. I necessarily revert to this report to show the facts (reading):

The proof, on the trial before the referee, showed that the plaintiff was first arrested on the 20th of November, at the instance of the defendant, Lawrence Delaney; that he was imprisoned for that night, and in the morning, on being brought before the Police Justice, was discharged, because it appeared that the money which it was alleged the plaintiff had embezzled did not belong to the defendant Lawrence, but was the property of his wife. He therefore went for her, and she came before the Justice and made her complaint for the embezzlement. The plaintiff, being still in the court room, was informed by the Justice that he could not depart until he gave bail for his appearance on the charge.

That is to say, the husband of a wife having made a

complaint criminally of embezzlement of property, it turned out that it was his wife's property and not his, and she was sent for, therefore, by her own oath to make that supporting contribution to the efficacy of the criminal charge. The charge turned out unfounded; at any rate, it was dismissed, and the party there accused brought his action for malicious prosecution and false imprisonment against husband and wife; and in the Court of Appeals, in the 38th of New York Reports, page 179, the question was considered (reading):

Where a prosecution is maliciously instituted by a husband and wife, the latter acting in the presence and by the direction of the husband, is she personally liable for damages in such action? . . . The authorities are clear that when a tort or a felony of any inferior degree is committed by the wife, in the presence and by the direction of her husband, she is not personally liable. To exempt her from liability both of these concurrent circumstances must exist, to wit, the presence and the command of the husband. An offense by his direction, but not in his presence, does not exempt her from liability; nor does his presence, if unaccompanied by his direction. His presence furnishes evidence and affords a presumption of his direction; but it is not conclusive, and the truth may be established by competent evidence.

And it appeared on the proofs that the referee excluded certain evidence, and a new trial should be ordered because he excluded evidence. But the principles are laid down, so that there is nothing inadequate, nothing that has been superseded by the growing civilization of our times. Indeed, although there may have been some hazardous (I think dangerous) innovation upon the defenses of marriage, yet our law in its justice has never varied in its toleration of this subjection of the wife to the husband, even to this apparent peril to the enforcement of criminal justice.

Now, Mr. Beecher goes back, goes into Mr. Moulton's house, sees Mr. Moulton, and does not see Mr. Tilton, and does not say anything to Mr. Moulton except that he has

been there, and in a moment says he will go home. Well, would you believe it? Mr. Moulton says he will go home with him. Well, Mr. Beecher knew the way home. Mr. Beecher didn't ask Mr. Moulton to go home with him. How happened it that Mr. Moulton went home with him? He wasn't any friend of Mr. Beecher's, he had not any relations with him. His services that night were on the retainer of Mr. Tilton as coöperating with him in some common purpose that they had; and why should not Mr. Beecher go to his house alone? It was then about ten o'clock, apparently. So far as any evidence goes that was about the hour. But Mr. Moulton says: "I will go home with you"; and so he saw him home, and saw that he didn't resort to anybody else, that he didn't have the benefit of any other than "heathen" friendship, that that night at least should be got through with the impression upon Mr. Beecher's sensibility, and a presentation to his reflections of these grave, these wonderful facts that came upon the heart and the mind of this sympathetic, this simple-minded, this guileless man, indeed with astonishment and dismay. For he was a man that looked at the heart, and looked at the character, and looked at the nature of things between this husband and this wife that could have been going on, and on, and on, till this reduction of the wife's truthfulness and this subjugation to the husband's wicked will had come to that pass that she could make a false charge to help his circumstances, and to make peace between her and him, and delude herself with the foolish notion that that benefit could be accomplished and no harm come to others.

Now, gentlemen, a flood of light is let in upon the actual relations of this husband and wife, of the absolute and abject submissiveness of that wife in the sense of religion, in the sense of fidelity to the husband, in the sense of duty, in the love of her husband, in the faith and hope that sometime and somehow, if she would cling to him and obey him, and honor him and serve him, till death them should part, there might

be a hope at last that she had redeemed the soul she so much loved, and should see the fruits of her suffering and her abjectness in the salvation for the long, immortal life that should rejoice her forever and ever, for she was a woman of an absolute piety. She believed in the realities of religion. It was a distress to her soul that her Saviour should be put to an open shame before her eyes by the crucifixion and scorn that her husband had written her years before. She did believe in the divine nature of the Saviour, and in the solemn menace, shall I call it?—in the solemn effort, finally, for salvation of all, of the solemn statement: “He that doth not confess me before men, him will I not confess before my Father in Heaven.” And a woman that carried through years of Christian duty and of Christian submission to a man, these realities of faith, showed what they would bring her to do, even if she should forget almost her own duties to herself, to her sex, to her human nature, to truth. I say the incidents and correspondence of those solemn interviews between her husband and herself in January and February, 1868, showed you how this woman would assume upon her innocent soul almost the unutterable sin, almost the unutterable shame, if so be that in her confession of sentimental weakness, of emotion, she might be in some degree able to smooth the path of her husband in recovery from wickedness to virtue; and how the greatness of her soul, how the beauty of her piety and the manifestations of her wifely love did for the time being triumph over the coarse nature, turn back the vulgar appetites, and ennoble the broken, ruined frame of a once Christian character. Ah! gentlemen, those letters, read to you by my learned associate, show you what a wife that loves her husband, and believes in the solemnities of religion, and thinks that the sufferings of this life are but for a season, compared with that eternal weight of glory that attends salvation—what she can do to save her husband.

Now, gentlemen, we are prepared to understand, for the

future, other questions than the immediate one as to the power of husbands over wives, and without much necessity of recurring to this general subject, which I have thus fortified by the solemn conclusions and the deliberate judgments of the jurisprudence that has grown up through ages, and which forms the basis of our administration of justice.

Mr. Tilton saw Mr. Moulton immediately after Mr. Moulton's return to his (Moulton's) house. He had no conversation with him before Mr. Beecher and he left the house; and he says in answer to a question:

Mr. Tilton told me that after he had spoken to Mr. Beecher, Mr. Beecher said: 'This is all a dream, Theodore,' something like that. I then asked him: 'do you say that that is all the answer that Mr. Beecher made?' and he said that that was all the answer that Mr. Beecher made. 'I remember that, sir; that is all I remember.'

Now, to go on with that night—that solemn night—Mr. Tilton goes home. He says, either in the letter which he procured from his wife or in his own explicit testimony, that he found her in distress, and carries through his evidence this view of the later occurrences of that evening: that returning to his home, without any inquiry on his part, and without any solicitude or interest, his wife puts in his possession, before retiring for the night, a statement, called here the recantation of the retraction, but its real nature I shall expose to you, and what was the course of things:

December 30, 1870—midnight.

*My Dear Husband:* I desire to leave with you before going to sleep a statement that Mr. Henry Ward Beecher called upon me this evening, asked me if I would defend him against an accusation in a council of ministers, and I replied solemnly that I would in case the accuser was any other person than my husband. He (H. W. B.) dictated a letter, which I copied as my own, to be used by him as against any other accuser except my husband. This letter was designed to vindicate Mr. Beecher against all persons save only yourself. I was ready to give him this letter, because



he said, with pain, that my letter in your hands addressed to him, dated December 29, had struck him dead, and ended his usefulness. You and I both are pledged to do our best to avoid publicity. God grant a speedy end to all further anxieties. Affectionately,

ELIZABETH.

Now, he is giving a statement of his, but I can read that just as well after I read to you Mrs. Mitchell's. She tells you the story of his approach to that sick chamber and that sick woman. He says, in this story of his, immediately following his statement that he had sent Mr. Beecher down:

Shortly after he left I left; on reaching home I found that Mrs. Tilton, who was then seriously ill and in bed, was agitated and distressed.

And then he gives the narrative of what passed, and how she voluntarily resumed her pen and ink, and wrote the following statement. Resumed her pen and ink; she had her pen and ink to write the Beecher retraction. No doubt about that, and she resumed her pen and ink to write this recantation.

#### RECESS OF THE COURT.

Now, we have a witness to whose credit no observations of mine need to add anything. The simple, honest character of this experienced woman, Mrs. Mitchell, attracts attention to what she says. She is uncontradicted by any testimony, and all these external facts observed by her, and rehearsed by her, must carry their impression with us. Imaginations about evidence are not to be indulged in. I have not asked you to detract one jot or tittle from the testimony of Mr. Moulton, or of Mr. Tilton, except upon the grounds that I have given you, out of their own mouths, and in the conflict that is raised between them and independent, disinterested, competent witnesses, who, whenever there comes a point of importance, where their testimony is

to be compared with Mr. Moulton's or Mr. Tilton's, contradict them, as a matter of course.

On the return of Mr. Tilton, he has said he found his wife agitated, and has carried the whole impression that, she put voluntarily in his hands, as a reparation of some wrong she had done, what is called the recantation of the retraction, and which I have read to you. The nurse says:

*Q.* Did you know of his return, and how first did you know of it? *A.* The first I knew of it, I was awakened in my sleep.

*Q.* Where were you sleeping? *A.* With Mrs. Tilton.

*Q.* Before you went to sleep had Mrs. Tilton gone to sleep, or not? *A.* Yes, sir.

*Q.* What excited your attention, or what awakened you? *A.* A whispering or buzzing sound. Mr. Tilton was talking to his wife; I could not tell how; he was down by the side of the bed, talking and whispering very earnestly; and it awakened me, and I said to Mr. Tilton: 'Mr. Tilton, this will never do; Mrs. Tilton must not be disturbed so.' She seemed to be very much agitated.

Then she cautions Mrs. Tilton against the danger of her taking cold, and the result is that, upon the suggestion either of Mrs. Tilton or Mr. Tilton, the nurse left the side of Mrs. Tilton, (Mr. Tilton withdrew from the room to enable her to put on her wrapper), and went and sat down in his study; and while she was there she heard, during a period which she describes as may be an hour, the angry tones of the husband, and the entreaties of the wife, and the walking to and fro, and then he comes into the study and takes pen and ink, and goes into his wife's room, and comes out again soon after; and the nurse goes back to her patient, and she finds her in great agitation.

*Q.* In what condition did you find Mrs. Tilton when you returned? *A.* She appeared and seemed as though she had been weeping; she appeared to be very much agitated, and I stroked her head and tried to pacify her, and I tried to calm her.

*Q.* How long did you thus treat her? *A.* For nearly an hour, as near as I can remember.

*Q.* Was her condition such as required this treatment? *A.* Yes sir; she was very nervous.

*Q.* Did she then go to sleep? *A.* She did, after a time.

And the nurse took her place by her side, and also sought repose.

Now, gentlemen, you see how completely false is Mr. Tilton's presentation of this occurrence, not in any misrecollection of words or misrecital of conversation, but in the whole moral, natural features of the transaction his object is to throw upon the interview between his wife and Mr. Beecher the credit of agitation, of coercion, of falsification in the letter then written, and to throw upon what occurred between his wife and himself, on his return, the traits of spontaneous statement of what she had been brought to do by the overwhelming influence of Mr. Beecher, and for a special purpose, and her desire before she went to sleep—meant to carry meaning, before she could sleep, before her conscience could be quieted, before she could venture to seek protection in her sleep, from Divine guardianship—she wished to put in his hands the truthful restatement of the matter. Well, gentlemen, these attendant circumstances that give force and character to the act itself, we none of us underestimate. We want to know what the truth is on that subject. I have given you the truth from Mrs. Mitchell as to the calm composure in which she found Mrs. Tilton when she returned to her chamber after Mr. Beecher had left it; that there was no nervous agitation, no need of the soothing of the nerves then; and now I have shown you that so far from Mrs. Tilton's having the spontaneous movement to make any new statement, give any new letter, redress any injury, correct any falsehood, she was calmly sleeping, with a quiet conscience, and her nurse beside her also asleep, with no solicitudes for her condition, in the peaceful frame of mind in which she found her after Mr. Beecher was there.

Then we have there the first blow to your belief in the

character, in the spontaneity, in the freedom from the husband's coercion of this third paper, from the wife, obtained—the second that night, the third in the series. If you believe the nurse you believe that Mr. Tilton, anxious to learn what had been the result of the interview that he had invited between his wife and Mr. Beecher, and from which he expected an adherence to the terms of the imputation of improper advances, wakens her and learns that she has retracted it, and that she has put the giving of it on the grounds, the truth of which was so well known to him, that she had been wearied by importunity, and weakened by sickness, and yielded to persuasion, almost to force. And then, alas! he found, much to his consternation, no doubt, that he was in precisely the same position in regard to Mr. Beecher, from this new movement toward him, in his wife's name, that he had been placed in the preceding Christmas Day, by undertaking to send upon Bowen's responsibility the missive, which Bowen had seen had no power against Mr. Beecher, and had merely placed him in the possession of the fact that he, Tilton, had desired to strike a blow—the malice without the power. But here was a more terrible situation for Mr. Tilton than that.

(A short paragraph in the argument as reported is here omitted. The diction is so faulty and involved either through fault in delivery or in reporting as to make the idea somewhat obscure. But the continuity and force of the argument are not disturbed by the omission.)

Now, Mr. Tilton found that all this arrangement to affect Mr. Beecher, lost the support that he had invited and counted upon from the interview with his wife. The interview with the wife had placed in Mr. Beecher's hands her own statement of the falsity of the imputation of improper advances, and of the motives and influences that had attended its framing and its presentation, and, alas, that simple and necessary treatment of the subject by the retraction,

although not designed in the wife's will, nor needed or wished for on Mr. Beecher's part, to prove a weapon against Mr. Tilton, or to be used against him, nevertheless was now a wife's confession indeed, of wrong on her part, of the false charge drawn out of her by her husband's malice to Beecher, or the sordidness of his needs in respect to his business affairs, that made him clutch at even an unlawful weapon to save himself from ruin.

Now, gentlemen, do you believe that story that the nurse tells, or don't you? There has been no contradiction of Mrs. Mitchell by either Mr. Moulton or Mr. Tilton, in any respect, on their return to the stand—not in any respect. We have not been told that he did not find his wife asleep; we have not been told anything to the contrary of Mrs. Mitchell's statements, except that in the preceding week he did not say he was a ruined man; so they have not left Mrs. Mitchell out of their minds; they have conned her testimony, and culled one point in which they could contradict her, and that was in his direct examination, was it (to Mr. Abbot), or did he repeat it in his rebuttal? And that was quite unnecessary to be brought into his rebuttal, because he had said in his direct that he had not said he was a ruined man. But he could have said that his wife was not asleep when he got home; he could have said that this private interview with her did not occur, and that the nurse was not waiting out in the study, and that he did not go in there and get pen, ink, and paper, and taken them into his wife's room, after angry tones on his part, and entreaty on hers; and we have not a word on that subject from this witness, this plaintiff. We must therefore accept it as absolute truth. Therefore you see how this letter of midnight of the 30th was got by direct, proved, coercion, by her husband's power over a sick, a nervous, an afflicted woman, abject in spirit, and in the extremity of disaster and fear for the livelihood of herself and her children. Now, in a letter that Mr. Tilton carried to Dr. Storrs, written for the purpose:



Late the same evening, Mr. B. came to me (that is Mr. Beecher) (lying very sick at the time) and filling me with distress, saying that I had ruined him, and wanting to know if I meant to appear against him. This I certainly did not mean to do, and the thought was agonizing to me. I then signed a paper which he wrote, to clear him in case of a trial. In this instance, as in most others, when absorbed by one great interest or feeling, the harmony of my mind is entirely disturbed, and I find on reflection that this paper was so drawn as to place me most unjustly against my husband and on the side of Mr. Beecher. So in order to repair so cruel a blow to my long-suffering husband, I wrote an explanation of the first paper and my signature.

Now, gentlemen, I have no hesitation in reading to you letters that Mr. Tilton gets from his wife, and carries for his purpose to other people, as being his acts, and but the tunes that he plays upon the nature and compliance of his wife. I take it, then, that you understand fully the occurrences of that night, and I have only to ask you to carry back from the proof, from the exact character of coercion under which the last letter, of midnight of the 30th, was extorted from Mrs. Tilton, to the period of the 28th and 29th in which Moulton and Tilton were storming in her sick chamber, arguing, representing, influencing, coercing that woman, under which they obtained the first paper of charge to be used to get an interview with Mr. Beecher, and as the basis of the interview with Mr. Beecher to show him that the wife had this responsibility. You will observe, too, that when you have a course of action, and its result proved, on the 30th, between this husband and this wife, and you have a similar situation, a similar effort, a similar presence, a similar persistency and importunity carried through three times, you know that the same coercion, producing the same results, was applied to get the charge of the 29th that was used to get the explanation of the retraction of the charge of the 30th. You see then that when Mr. Beecher in astonishment, asks this woman as she lay there: "How

could you do this?"—not because it would injure me, Mr. Beecher, not for this or that reason, but on the simple and direct appeal twice or thrice repeated"—How could you do this, Elizabeth, when it was not true?" That was the awful state of things in Mr. Beecher's mind, of the moral ruin, or of the mental weakness that had made a woman that he respected, and admired, and loved—in the sense that he has described to you, and which he does not seek to disparage or conceal—how she could have done it when it was not true. And then she tells him, not that she thought it was true, not that there had been anything between them that could be of equivocal import, and that she believed was true for the moment—nothing of the kind; but "How could I help it? The importunity, weariness, sickness, disaster, and my relations to the husband"—which she did not need to repeat to Mr. Beecher, because he had been led into a full acknowledgment of them during her resort to him and his wife in the preceding weeks of the same month—"and the assurance that this temporary contrivance for immediate use would put an end to all trouble between me and my husband; that was the reason—not to hurt you but to aid him, and me, as his subject and submissive wife."

Now, gentlemen, you will see that as Mr. Tilton makes his wife say—and say, I have no doubt, truly—in this letter to Dr. Storrs, when her attention is drawn to one point she is absorbed in it, and thinks of nothing else. "When," she says, "my husband importuned me for something to be used usefully for him, I gave it, and not to injure you. Now, you say it will injure you, why, I take it back. The truth is there is nothing in it as you know, and I put the matter as it should be." Alas! if it could have been so, and only so, but when Mr. Tilton returns, he says, "Why, that is all very well, if you please, but there is more than that in what you have said. You have disclosed to Mr. Beecher that I have got from you by force, by persuasion, and by fraud,

a false charge against him, and that puts in his hands a true charge against me." "Well, that is not my desire or my purpose, and so I give you an explanation, not a retraction of what I have given to Mr. Beecher, not a falsification, but an explanation of it, that I only mean it as an extinction of my charge that I gave you against him, and not as a source and origin of any charge against you. It is to protect him against you; this is to cover Mr. Beecher against this poisoned arrow of falsehood that I gave to you, by giving him the shield of truth against all the world; but I did not mean that it should be a weapon against you, nor to be used against you." Well, there wasn't any danger of its being used against Mr. Tilton by Mr. Beecher, if you can believe Mr. Tilton that the last thing that he desired was to have this controversy between Mr. Beecher and himself, concerning anything that touched his wife's character or honor brought to light. Now, the explanation, you will observe, does not deny the statement in the retraction. It only says:

I wish to give a statement that Mr. Beecher called upon me, and asked me if I would defend him against any accusation in a council of ministers, and I replied solemnly that I would, in case the accuser was any other person than my husband. Mr. Beecher dictated a letter, which I copied as my own, to be used by him as against any other accuser except my husband. This letter was designed to vindicate Mr. Beecher against all other persons, save only yourself.

Now, it does not say that she had given him a false vindication, a false defense, only that if there came to be an issue between Mr. Tilton as accuser—her husband as accuser—she did not intend in advance to espouse hostility to her husband, to disarm, disable him in advance; in other words, she did not intend to take the attitude of a wife betraying, reviling, disgracing her husband. Well, we know how foreign to any traits of this woman's character, putting herself

in wilful opposition to the interests or feelings of her husband was. Now, we have very clear evidence that it was this second element of the retraction, of antagonism to him, that created Mr. Tilton's hostility. I read now from his statement to Mr. Belcher:

After speaking of his resentment against Mr. Beecher for getting this paper did he state any reason why that was so? *A.* That it made him appear, made the husband appear as in antagonism with his wife, and made Mr. Tilton appear as though he had been making a false charge.

And Mr. Moulton gave the same reason to Mr. Tracy when Mr. Tracy and Mr. Moulton were talking together in November or December, 1872, and Mr. Tracy could not see why a man should not be allowed to get a retraction from a false charge. Mr. Moulton pointed out to him:

The retraction is something more than a mere retraction. It implies that Mr. Tilton coerced the letter from his wife, and that was what gave offense to Mr. Tilton.

Now, gentlemen, I have read to you the language of that slip of paper as produced by Mr. Tilton in the narrative that he gives, as repeated by himself two days after it was first read to Mr. Beecher when Mr. Tilton told Charles Storrs what it was, and I have corroborated and re-enforced that view by every form and degree of supporting evidence from numerous witnesses that the requirements of full satisfaction in your minds could demand. We are right always in understanding that it is what is proved that is to carry down the presumed innocence of a defendant; and I ask you now whether that being so, that the charge then was of improper advances and nothing else, untrue as that was, you don't at once see that all possibility of the interview having carried an imputation of actual guilt of this immense area and heinousness that is charged, and which is the measure, if there be any measure at all—is wholly incompatible with it?

Now, gentlemen, if that is not the true view; if this retraction, written by the woman who made the charge, doesn't prove it; if this solemn, formal statement, called the "True Story," in which the words are given, and which he says he copies as his wife's statement, and neither adds to, nor takes from, by any comment of his own—if that is not the charge, and the whole charge, why don't you prove something else? Why don't you show it? Why did you destroy the paper as soon as you had a chance?

Now, gentlemen, the responsibility of this suppression of truth, if the truth be not fully disclosed, this destruction of evidence, is perfectly well understood. Here is the paper which, if preserved, would maintain its identity, and for that point, at least, in the interview would be before your eyes and mine exactly as it was then, and there were two copies of it. One Tilton destroyed, and the other, after having been kept and studied, promised to be tied faithfully to the retraction, and never parted with without Mr. Beecher's consent, was destroyed. Well, now, will they say, "Why, the retraction was the paper that you were interested in having preserved?" Indeed? That is so, is it? The retraction and the charge measure each other, and both together didn't admit of difference of construction or argument of invention, of falsehood, of treacherous memory and misrepresentation.

Ah! gentlemen, we understand in courts of justice the spoliation of evidence; we understand the destruction, the concealment of decisive and important instruments of conviction. We have frequent occasions to apply this in regard to crimes, of violence committed by weapons. We want the weapons, and if there is a pistol and a bullet, a pistol found in the accused's hands, and a bullet found in the victim's heart, we want to see the two things, and, whether they fit or not, before we will charge the accused with having sent that bullet to the death of the victim from his pistol.



Now, suppose three men leave common haunts of dissipation or of gambling, friends, if you please, of the friendship that belongs to such companions at least, companions in immorality, companions in revelries, companions in the knowledge of each other's guilt, and they leave their common haunt, and by a quarrel one of them is slain by a pistol shot, and the question is which of those companions, if either, dealt the blow. And fleeing, as they well may, one returns by crafty provision to give succor to the wounded man, takes the rôle of proclaiming the murder, and the precaution of extracting the bullet and keeping it. And now, when the fleeing companion, under the attraction of pursuit and suspicions from his fleeing, is put upon trial, and the witness swears that the deadly assault came from the accused, and not from himself, and that he extracted the bullet and it was too large for his pistol, and fitted the pistol of the accused, then will the accused's defenders ask, "Where is the bullet? It was last in your hands. Where is the bullet?" "Oh! but I measured the bullet, and tried the bullet. It would not go into my pistol; you see it could not have come out of it; but it would go into his, and just fitted it." "Yes, but where is the bullet?" "Ah!" says he, "I kept it; and after a while, being satisfied, and having kept the measurement and tried it, I melted it up." "You melted it up?" And then the Judge says to the prosecution, "Where is the bullet?" and the jury say, "Where is the bullet?" "Oh! I melted it up. I have several witnesses that will prove the dimensions of it;" and the answer is, "You cannot use your mouth for a bullet-mold to take away the life of the accused. Who killed the man—that we don't know; but that bullet would have told, and that bullet was in your possession and was destroyed by you." And then another witness says after he has left the stand: "We made a plaster mold of that bullet while it was in this man's possession, and if the bullet has been melted up the mold is here, and now we will see which of the pistols

the bullet matches, and which of the doubtful authors of the crime that bullet is now to slay." And then this mold, proved and proved over and over again as being the measure of the bullet, is made to reproduce it in its leaden form, cast in the mold, and it fits the pistol of the witness and saves the life of the accused.

Ah, gentlemen, you want the missile of that night. You have had the solemn pledge of Moulton that it never should be destroyed while anything else remained to be the method, the occasion, the instrument of doubt, or imputation, or, of fear, and it has been destroyed, and until that missile is proved to have been of the nature, of the form, of the effect, that is to convict, or aid in convicting Mr. Beecher—until that is produced you refuse to the spoliators of evidence the ability to make their mouths reproduce it. But when, besides, we bring you the very mold that was taken of it on the very night that it was used, in the retraction which was framed around it, and when we produce the measure and the impression of the bullet, of the missile as given by the witness now seeking to slay, two days afterwards, to his bosom friend Storrs, and when we read it under his own hand in the narrative of the story that he framed, and bind it and clamp it and clinch it by the testimony of five witnesses to whom the same dimensions have been given, and no witness has pretended that any other dimensions have ever been given for it, and at this trial no other dimensions have been given for it, you have not any doubt, any more than in the case of open violence that I proposed to you, that the witness should change places with the prisoner at the bar, and receive the punishment that belongs to the crime, the crime now of moral assassination as meditated and attempted.

I repose with entire confidence upon the proposition that I laid down to you in advance of my examination of the occurrences of the 30th of December, that if a charge of this guilt was not made then, and a confession of this guilt was

not made then, never was the charge made and never the confession made. There is no dispute that there was no confession on Mr. Beecher's part. There is no dispute of what his conduct was; that he denied it, that he pronounced it wholly untrue and impossible of having proceeded out of the mouth of Elizabeth Tilton; that he faced the alleged authority, procured the retraction, went about his business, and, though attended by Moulton to his house that night, had no occasion to depart from the position which he had forced—a confession from them—and which they repeated over and over again afterward in their dealings with others; that the charge, whatever it was, was no longer insisted upon by Mrs. Tilton, and the test that Mr. Tilton had proposed to him, of reference to her, had failed. Now, they asked Mr. Moulton—"Let me ask you was anything said as to the substance"—this is as between Moulton and Beecher when Moulton was attending him to Beecher's own house.

*Q.* Let me ask you, was anything said as to the substance of the interview between Mr. Beecher and Mr. Tilton, when you were not present? That is, the interview that he was talking of. *A.* Why, he told me that Tilton had told him of the confession of his wife to him.

*Q.* Repeat what he said. *A.* Mr. Beecher told me that Tilton told him that Elizabeth had confessed, and read to him what either was a confession or a copy of a confession by Elizabeth, of sexual intercourse between them, and he told me that Theodore had told him of the reasons for sending to him the letter through Mr. Bowen.

Well, now, Mr. Moulton had that very letter, that had been read by a copy that night to Mr. Beecher, in his own pocket at that moment. And, see how he puts it; he doesn't put it upon any notion that Mr. Beecher had repeated the language of the letter. He makes him call it, as they call it always themselves, after the organization of the plan to prosecute Mr. Beecher, a "confession." But that is his

account of the matter, and that is the only account of it. If there had been any truth in it, he could have been asked to give you the words of that letter, because he had the original at the very moment that he says this conversation was had, and why didn't they ask him that?

*Q.* What conversation did you have, if any, on the way to the house? *A.* Well, it was nothing but a repetition of the other conversation about Bowen, and he asked me to be friendly to him. I said I would be.

*Q.* Repeat as near as you can. *A.* He said he wanted me to be a friend to him in this terrible business.

*Q.* Did you part with him at his own house? *A.* Yes, sir.

So that is the end of that interview.

Now, gentlemen, when the paper was sought to be proved on their side, I objected, on the ground that having destroyed a paper they had no right themselves to manufacture it over again. The learned Judge did not sustain that proposition, or did not rule upon it, but rejected the evidence from Mr. Tilton's mouth, as a confidential communication from the wife to the husband.

JUDGE NEILSON: I think I put it on both grounds.

MR. EVARTS: Well, I didn't understand that your honor necessarily passed upon the other ground. We gave, then, the contents of the paper, and that gave them the right to give the contents; and the disposition of the confidential communication between the husband and wife did not apply to a letter put in Moulton's hands and kept in his hands nearly two years. No; not a bit of it. The reason that they did not give it was that they must give it as Mr. Beecher gave it, as the "True Story" gave it, as the statements to Charles Storrs, to Belcher, to Schultz, to Southwick, to Harman, and to McKelway gave it, or face the charge of perjury on the central fact, proved on them by their handwriting and by a cloud of witnesses. It was not so much conscience that made cowards of them about this missive—

this missile—as the fear of men's judgments; and as I have indicated to you, you will find a tortuous path followed by either of these witnesses to avoid, on a material fact, an issue with two upright witnesses against them.

[NOTE: Yielding to important practical considerations, it has seemed advisable to omit, at this point, a large part of this necessarily long address to the jury, taking from the report the closing words of Mr. Evarts. The interested reader or student of this intensely interesting trial may be referred to the *verbatim* report, published at the time in three large volumes. It must suffice here to indicate only, in the briefest possible way, the topics discussed by the advocate in the remaining three days of the address.

There was a mass of evidence in the case directly bearing upon the conduct of the parties involved and the several communications between them, after this night of December 30, 1870, and during the succeeding three years up to a short time before this prosecution was instituted, in August, 1874. Mr. Tilton had as his adviser and friend Mr. Moulton, in whom, after the scenes of December 30, 1870, Mr. Beecher was also led to confide. Mr. Moulton became known and universally spoken of, at the time of the scandal and during the trial, as the "mutual friend." The evidence shows that through his persuasion and argument, upon one pretext or another, all of the letters and written communications between the parties were placed in his custody under his pledge that all should be inseparably kept together or else that all should at some future time be destroyed. Through the same persuasion, all subsequent letters and communications were deposited with the "mutual friend," under the like pledge. The evidence is also clear and undisputed that the personal relations between Mr. Beecher and Mr. Tilton were brought back to an attitude of friendliness, and that Mr. Beecher's financial and other aid was given to reestablish, if it were possible, Mr. Tilton in his fortune and position before the public, that had come to such great disaster, through his dismissal by Mr. Bowen and through his own misconduct.

Mr. Evarts, in the remainder of his argument, which would occupy more than two hundred printed pages, takes up in his-



torical sequence all this subsequent conduct of the parties. In his descriptions, based upon and taken from the evidence of the case, of the interviews between Mr. Moulton and Mr. Beecher, that were continuous in the days immediately following December 30, 1870, and in his interpretation of the evidence, the advocate displays his keen and penetrating insight into the phases of human nature that the trial had portrayed. His convincing interpretation of these interviews and of various letters and statements, which were claimed by the plaintiff to be incriminating evidence against Mr. Beecher of the guilt charged in the prosecution, shows, by a clear and candid analysis, that they were not only consistent with complete innocence of the charge, but were wholly and absurdly inconsistent with guilt.

The argument as a whole tends, with convincing force, to demonstrate the utter falsity of the accusation against Mr. Beecher and of the stories told at the trial by the chief witnesses against him, not only by showing the contradiction on important questions of fact by disinterested and unimpeachable testimony, but by exposing the preposterous absurdity of the stories themselves, that rendered them wholly unworthy of belief, even on the assumption of guilt.

On the last day of his argument Mr. Evarts makes a complete defence and vindication of his associate Mr. Tracy, whose professional conduct in taking up Mr. Beecher's defence had been assailed by their opponents at the trial.

The closing utterances of this great forensic achievement follow.]

Now, gentlemen, this survey of the evidence, no doubt more cursory in some topics than could have been desired, has yet brought before you, as I trust with entire candor on my part, a very considerable survey of the general bulk and force and true logical effect, as it has been presented. It is, of course, on the part of the defendant, a defense against charges which are to be proved against him, and which stand for naught until they are proved. And the evidence, therefore, is mainly in contravening and confuting false or

mistaken evidence against him, or such substantive facts if there is need of explanation, always adding the great purgation of the defendant by his own mouth, submitting himself to your observation, your criticism, your judgment, and to the cross-examination of our learned opponents under all the suggestions which Mr. Tilton and Mr. Moulton can furnish from the long association and observation, neither honest nor good-natured, to which they have subjected him for these several years.

I do not hesitate to say that, whatever criticisms may be made against incompleteness of memory or misconception of isolated and incidental facts, if any such criticisms can be made, the cross-examination does not reduce the direct examination, and that the direct examination is as ample, as clear, as definite, a denial of every form and degree of impure conduct with this lady as it is possible for language to furnish. And you know that this witness, of all others, knows what the truth is, and he knows that his story is not unchallenged, that it is not secure against the misconstructions of men's minds, and of men's tongues, for it is in the face not of witnesses who know the facts, but in the face of witnesses who have not hesitated to present to you out of Mr. Beecher's mouth what they call contrary statements and confessions. And, therefore, I have presented to you this man of great intelligence, of an absolute integrity—save so far as this very matter is inquired nobody questions it—and I have seen no evidence of double dealing, or of prevarication, or of falsehood in any of the acts or acquiescences of Mr. Beecher, that are brought in evidence against him. And here he stands with the absolute right to your credit, and with no escape from that credit, except your absolute conviction of him as a perjurer, exposing himself to the punishment of men. Now, many a man has been frightened from the truth by fearing the falsehoods of people against him. But Mr. Beecher has stood throughout this matter, con-

fident in his conscience and its approval, confident in his faith in God, confident in truth, and ready to take at the hands of false witnesses, if need be, punishment of men, but not willing to tell a lie to his own conscience, or to God, or to refrain from the truth in any respect. And when a man thus presents himself as the sole witness knowing of the facts, and as a man with unquestioned character for truth and duty in every department of life, and through the long series of years that he has lived in the notice and under the burning criticism of men, there is nothing in our trust of justice if that does not end, as matter of evidence, this case. But, when we find against him, only, as I have said to you, evidence, not of a physical and direct observation of the senses, but remote moral reasonings from the strength of the phrases in his letters, that degrees of solicitude, of compunction, of self-reproach, of commiseration of distress, are to be turned into evidences of definite and heinous guilt, when we find that that is the only resource and only pretense, why, we at once see that all the prolixity, and all the ingenuity of argument that has been resorted to on our part, really we should have been saved from, whenever it came to be admitted that there was no evidence of impropriety of conduct between these people, and that there was nothing in the direct form of admission of the guilt or form of the crime charged.

It is *their* flight from the common level of common sense and actual evidence into this remote region of argument of a moral nature which the law rejects, that has led us in this long chase of exposure which has satisfied your minds, and the minds of all those who intelligently have watched the course of this trial, that the true force of moral evidence is an absolute exclusion of the possibility of guilt, and an absolute and definite exaltation of the character of Mr. Beecher, as a man of these sentiments, of honor and of duty that have filled him with anguish, that has embittered

life, that he should have been led into an exposure and an injury of the happiness of a family by his heedlessness and inattention.

Now, gentlemen, a jury brought in any doubtful issue, even, or balance of testimony, to a determination which carries a verdict for one side or the other, and if it be a verdict that carries to the defeated party an injury or a loss, so that the measure of benefit to one is distinctly measured also by injury or loss, or deprivation to the other, finds itself under some stress. But here you have observed, from the outset, that the ordinary distraction which might divide the sentiments and feelings of a jury, so far as sentiments and feelings might be indulged by honest men in regard to a decision of the truth, are here wholly absent; for in giving your verdict for the defendant Mr. Beecher, you give a verdict of safety and of honor to the two families of Mr. Beecher and of Mr. Tilton. You uphold the wife, you save the family of Mr. Tilton, and you save him in his permanent and definite honor.

Alas! you cannot save him in his truthfulness, for he has told opposing stories on every definite and important fact in this cause. Your verdict then, for the defendant, is a verdict of safety and honor to everybody whose safety and honor have been involved in this long examination. Your verdict for the plaintiff strikes into the heart of his wife, and to the destruction of his children; breaks the heart of this noble wife of Mr. Beecher, and destroys the happiness and honor of that family; strikes a blow at the credit of our communities; brings dishonor upon the name of our Christian religion, however we may be divided in sects, or sentiments, or creeds; and, in fact, is a blow at the dignity and credit of human nature and the civilization and purity of American life. And you are asked to do that in the absence of a single item of proof of crime committed, upon the absolute and direct exhaustion of the possibility of his guilt by

the only person who knows all about it that the law permits to testify, and upon affirmative evidence shaken and reduced both in the credit of the witnesses, Mr. Moulton, Mr. Tilton, and the feeble supporting evidence of Mrs. Moulton, and met on great facts, not only by the discredit of the speakers, on their side of the testimony, but the direct refutation of the facts themselves, by witnesses who are obliged, on their own statement of the matter, to confess a line of statement under the most responsible obligations to speak the truth, and under the most direct forms of asseveration through a series of years, that there is not a word of truth in the present charge; and of course whatever of loose and vague perplexity or obscurity might be left in the mind of any man, in this jury or out of this jury, there is not any doubt of what the duty is under the rules of law that require you in finding an affirmative verdict for this plaintiff, a verdict against this defendant, to put it upon affirmative proof that excludes from your mind a reasonable doubt of the innocence of this defendant. And in that state of duty and of law, and on this state of evidence which I apprehend must necessarily command from you, each one of you, an absolute conviction of the actual and complete innocence of Mr. Beecher, and an actual conviction (with whatever charity you may choose to cover the faults of the accusers or their supporting witnesses) that this accusation and this support of it in your case is in the nature of a conspiracy growing, and growing, and growing, having no desperate purposes at the first but in continual disappointment of the objects that they expected to accomplish by their frustration, by the perversity and folly of Mr. Tilton, has finally come to an accusation against the honor and the moral life of this great man. You cannot doubt, you do not doubt, but if any one of you does doubt, that doubt itself must give the verdict for Mr. Beecher.

And, now, gentlemen, character is always felt to be, in difficult and uncertain inquiries, an object of most solicitous



interest on the part of every judge, and every tribunal, and every jurymen that has passed upon it. Ah! how sad is the condition of a stranger and a foreigner who comes to be brought into question and put on trial in a land where he is found alone, with no knowledge of his past character, no friend to judge him as belongs to his people, and their customs, and their nature! And how benevolently the English law provided for this sad condition of the stranger that was put on trial, by giving him the best support possible, in filling the jury one-half with men of his own country, that, at least, he might not be judged by men all foreigners to him, and he might have in the knowledge of one-half of the jury some means of restoring what he missed by being put on trial in a strange land where nobody knew him, or his surroundings, or his character.

Now, sometimes character is spoken of as a matter that is to be thrown in as a weight in doubtful situations. I prefer to find in character that direct means of refuting false evidence, upon the eternal principles of truth, that every fact matches every other fact; and when a particular course of conduct and of crime is imputed against a stranger and you know nothing of his past life—or an obscure person—and nothing can be learned, how solicitous a jury are to see if they can eke out of the evidence something that will stand instead of this knowledge that they miss, so that they can have the support of feeling that the conviction that they feel bound to give is not at variance and not at violence with his character. It is on that principle that character, when known and understood, and not open to mistake, when the vice and fault is of the heart and nature, when it goes through years of destruction and depravity, as this charge (if there be any truth in it) does go for Mr. Beecher, that you want to know whether it matches his character. If it matches, it will fit somewhere. If it doesn't fit anywhere, it does not match. And when the whole case against a man

is not of witnesses who have seen a murder, or seen the approaches of adulterous lewdness, or seen the opportunities and seen the deviation from proprieties and secrecy, then it is all moral evidence that he said so, or that it is to be drawn from his letters—the question is: Does it match? Why, the housewife, when she wishes to match a garment, either in color or in texture, has no difficulty in determining that crimson and scarlet do not match with purple or white, or that woolen fibre does not show itself to have come off the same piece with the linen texture. And when you have this character woven in lineaments that no man doubts of, and this life in its whole period from boyhood to the present day, open and public and generous and kind, elevated, noble, and true, you do not need to spend much time in finding out that the scarlet guilt of adultery, and the coarse, selfish pursuits of seduction do not match with the generous heart, the loving kindness, and the nobility of Henry Ward Beecher.

But then they say, too, “Ah! but all this long association, and all this simplicity of imposition, and all this difficulty of extrication, and all this entanglement of the sequences—that does not match with Mr. Beecher’s intelligence.” Well, gentlemen, it matches with all the knowledge that you have of him in regard to his worldly wisdom, or his suspicion of others, or his harboring evil constructions of any man. Up to the very end of his testimony, he overflows with kindness toward all his accusers, and with charity for every evil falsehood they have spoken about him. Ah! gentlemen, it does match with Mr. Beecher, as it is apt to match, I am sorry to say, with so many good men when they come into the toils of ill-disposed, contriving, managing, plotting enemies. Why, if your Honor please, it long ago was but the expression in an epigram of this recognized principle of human nature:

*Tam saepe nostrum decipi Fabullum quid miraris, Olle? Bonus homo semper est tyro.*

Why do you wonder, Ollus, that the excellent Fabullus is so often deceived by fraudulent impositions upon him? The good man is always a schoolboy to the arts of fraud.

And such is the experience of human nature. And who would wish to lose innocence by becoming thus the victim of imposition till he had lost faith in human nature? No, Mr. Beecher will be a schoolboy to the arts of fraud, hereafter as heretofore. It does match with his nature, which all men know, and which has been described in a single word by witnesses here, "that he is a great boy."

Now, Mr. Tilton, gentlemen, presents to you an extraordinary character in the common sphere of everyday life to which we are accustomed, and yet nothing can be clearer than that all the imputations we are forced to make against him, his motives, his evidence, are quite in consonance with his character. While Mr. Beecher has gone on from his early marriage and his early labors in the life of a man who has constantly worked, and worked for the good of others, and has taken, without arrogance and without pride, such meed of popular approval or the enthusiasm of his friends as followed from his conduct, you find that Mr. Tilton, beginning in the same faith, with the same piety, started upon the same career with the support of that most useful aid, a wife of equal or greater piety, wrapt up in Christian faith and Christian duty as the end and object of life, while he pursued that path and was favored by the friendship, by the earnest and enthusiastic support in his rising career, of Mr. Beecher, that, finally, he comes, in the arrogance of his nature, and extravagance of his selfishness and egotism, to discard all these principal and supporting elements of useful life, to reject Moses and the prophets, to trample upon Christ and the apostles, to treat with equal scorn and contumely the thunders of Sinai in the commandments and the compassions of Calvary as the dependence for human hope, and on and on in what is regarded by feeble intellects as an exaltation of

independence and of manhood, and it ends in this proud career which rejects priestcraft and religion and the bonds of society and the duties of life, in taking out his tablets in the salon of Mrs. Woodhull to record the revelations made in a mediumistic fit!

Such, gentlemen, is that career. And whenever the egotism which is the preference of one's self before everything else, which is defined to be "a passionate love for self, leading a man to consider everything as connected with his own person, and to prefer himself to everything in the world," when a man becomes thus a worshipper of himself, when he has rejected faith and worship of a Divine Being, when he degrades himself in his relations to society, he puts himself almost in the condition of one morally insane, and he never is, by the immutable laws of our being, left to stand still on that plane of self-worship. If he does not hold on to the exaltations of the spirit he drops lower and lower in the degradations of the body. The moral government of this world is not permitted to stand upon a defiance of the sanctions by which virtue and faith and piety have their place in that moral government, and assume and preserve for every counter-passion of selfishness and degradation the same position in the moral world that is taken for the good and the faithful and the true. And thus it has long ago been noticed by those who study the exhibitions of human nature in its morbid forms that "Egotism, adopted as the rule and the guide, depraves and destroys the moral nature."

"Notwithstanding the prejudices to the contrary," says a great writer on this moral deformity, "there is a disorder of mind in which, without illusion, delusion, or hallucination, the symptoms are mainly exhibited in a perversion of those mental faculties which are usually called the active and moral powers, the feelings, affections, propensities, temper, habits, and conduct. The affective life of the individual is profoundly deranged, and this derangement shows itself in what he feels, desires, and does. He has no

capacity of true moral feeling. All his impulses and desires, to which he yields without check, are egoistic. His conduct appears to be governed by immoral motives, which are cherished and obeyed without any evident desire to resist them. There is an amazing moral insensibility. The intelligence is often acute enough, being not affected otherwise than in being tainted by the morbid feelings, under the influence of which the persons think and act. Indeed, they often display an extraordinary ingenuity in explaining, excusing, or justifying their behavior, exaggerating this, ignoring that, and so coloring the whole as to make themselves appear the victims of misrepresentation and persecution. Their mental resources seem to be greater sometimes than when they were well, and they reason more acutely, apparently, because all their intellectual faculties are applied to the justification and gratification of their selfish desires. Moreover, the reason has lost control over the passions and actions, so that the person can neither subdue the former nor abstain from the latter, however inconsistent they may be with the duties and obligations of his relations in life, however disastrous to himself and however much wrong they may inflict upon those who are the nearest and should be the dearest to him. He is incapable of following a regular pursuit in life, of recognizing the ordinary rules of prudence and self-interest, of appreciating the injury to himself which his conduct is. He is as distrustful of others as he is untrustworthy himself. He cannot be brought to see the culpability of his conduct, which he persistently denies, excuses, or justifies; has no sincere wish to do better. His affective nature is profoundly deranged, and its affinities are for such evil gratifications as must lead to further degeneration and finally render him a diseased element which must either be got rid of out of the social organization or be sequestered and made harmless in it. His alienated desires betoken a real alienation of nature."

Now, this morbid self-worship with which Mr. Tilton has elevated himself above the restraints of religion, of morality, of duty to wife and children, and to society, wherever there was put in competition even the infliction of a pang to his self-applause, is the final and conclusive explication of



how what seems so strange in his career finds in it the natural development of moral alienation from faith and duty, which finally brings confusion of ideas as to what duty and morality are, and ends in the evil gratification of the selfish appetites, regardless of any disaster to those who are nearest, and, in the language of this writer, should be the dearest to him.

And, now, gentlemen, there is nothing new in this, if we will only admit the solemnity, the sincerity, the Divine authority, of the great oracles of our religion. Mr. Tilton gratified himself by sonorous verses that described his downfall, but there is, on higher authority, and in much simpler phrase, a beautiful description of the downfall, accompanied with the moral reason why it exists:

"Now, he who heareth these sayings of mine and doeth them, I will liken to the wise man that built his house upon a rock, and the rain descended and the floods came and the winds blew and beat upon the house, and it *fell not*, for it was founded upon a rock."

Did ever the rains descend, and the floods come, and the winds blow about the fabric of a man's character and life as now for these four years upon the character and life of Henry Ward Beecher? And does not every one know that the reason the structure did not fall was that it was built upon a rock of faithful belief in the sayings of the Founder of our religion and of faithful adhesion in the work of his life, to those sayings?

"And he that heareth these sayings of mine and *doeth them not*, I will liken him to the foolish man who built his house upon the sand, and the rain descended, and the floods came, and the winds blew and beat upon that house, and it fell, and great was the fall thereof."

Your verdict, as all things true must match, will match that decision, made for all such men for all time and under all circumstances. Indeed, a more apt, a more impressive

instance in the experience of human life, that He who said these words needed not that man should testify of man, for He knew what was in man, was never furnished in this world than in this comparison between this defendant, whose life and character were built upon a rock by hearing and *doing* the sayings of Christ, and this life and character (turning to Mr. Tilton) that dared to try the experiment of hearing and doing them not.

And now, if your honor please, we must acknowledge with respectful deference the disposition and the order of this solemn trial, so interesting to these parties, to this community, to all the present life in Christendom, to all the future of history, and to acknowledge that if there be any miscarriage of justice, your skirts will be clear of it; and also to admit that in the actual experiences of the course of things in the trial, the anxieties and solitudes that made us urgent to have the limits secured by definite orders of the Court, under the assignment of particulars of the charge, have proved to be unnecessary, for we have not had any evidence at all of any time or place, by any witnesses going outside of the charge, and none, as I think, within it.

And you, gentlemen, have done your duty as faithfully as citizens ever do it. You have been taken from your employments, your profits, and in some instances, perhaps, in some degree from your livelihoods, and every day and every hour, from the beginning to the end, you have given to the witnesses and to the counsel the honor of your patient, interested, indulgent attention; and in your verdict you will find, and *we* shall find with joy, that truth matches all round, and your verdict will be no exception.

## X

# ARGUMENTS BEFORE THE ELECTORAL COMMISSION IN THE DISPUTED PRESIDENTIAL ELECTION OF 1876.

## NOTE

The presidential canvass of 1876 was conducted with great heat and bitterness and the result of the election was a matter of grave dispute. Each political party made claim to the electoral vote, in whole or in part, in four States, viz., Florida, Louisiana, South Carolina and Oregon and from each of these there were forwarded to the seat of Government at Washington opposing certificates, with the claim of authenticity as establishing the choice of electors and their respective votes for President and Vice-President. In the case of Florida there were three such certificates, one on its face purporting to establish the election of Republican electors and their votes for the Republican candidates and the other two with similar purport in regard to the Democratic electors and their votes for the Democratic candidates. In the case of Louisiana there were two certificates on behalf of the Republicans and one in favor of the Democrats. From Oregon there came two certificates, one giving three electoral votes for the Republican candidates and the other giving one of the three electoral votes of that State to the Democratic candidates and but two to the Republicans. In the case of South Carolina there were two certificates, one in favor of the Republicans and the other in favor of the Democrats. The electoral votes of these four States were as follows: Florida was entitled to four votes, Louisiana to eight, Oregon to three and South Carolina to seven, making a total of twenty-two electoral votes in dispute. The total number of electoral votes was 369, and, without counting the votes of these disputed States, the Democratic candidates had received 184 votes or within one of a majority. The situation, then, was such that if only one of the electoral votes in dispute were counted for the Democratic candidates they would have been

declared elected as President and Vice-President for the ensuing four years, while, on the other hand, it was essential to the seating of the Republican candidates that the entire vote of all the disputed States should be counted as cast for them.

The situation thus presented had not been provided for by the Constitution or by any congressional action under the Constitution, nor did the history of presidential electoral counts furnish any precedents by which Congress could be guided in this critical juncture. There was great popular excitement, and much wild talk was indulged in of seating the next President by violence and a revolutionary uprising of the adherents of one side or the other. Fortunately, calmer and wiser counsels prevailed, the result of which was the passage of the act of Congress known as the Electoral Commission Act.

Its official title was "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, anno Domini eighteen hundred and seventy-seven." By this act a Commission was formed composed of fifteen members constituted in the following manner: The Senate was to elect five senators and the House of Representatives five members of that body to be members of the Commission and the act designated five Associate Justices of the Supreme Court to be the other five members. In regard to the five Associate Justices who were to sit on the Commission the act provided that "On the Tuesday next preceding the first Thursday in February, anno Domini eighteen hundred and seventy-seven, or as soon thereafter as may be, the Associate Justices of the Supreme Court of the United States, now assigned to the first, third, eighth and ninth circuits, shall select, in such manner as a majority of them shall deem fit, another of the Associate Justices of said Court, which five persons shall be members of said Commission; and the person longest in commission of said five Justices shall be the president of said Commission." The personnel of the Commission as thus formed was as follows: Mr. Justice Clifford (who was ex-officio president), Mr. Justice Miller, Mr. Justice Field, Mr. Justice Strong and Mr. Justice Bradley, from the Supreme Court; Senators Edmunds, Morton, Frelinghuysen, Thurman and Bayard, from the

Senate; and Representatives Payne, Hunton, Abbott, Garfield and Hoar from the House.

The act provided for the assembly of the Senate and House in joint session on the first Thursday of February, 1877, being February first, for the purpose of opening the certificates from the several States and counting the electoral vote. Opportunity was given under the terms of the act to interpose objections in writing to the acceptance of a certificate and the counting of the vote therein contained in any given case; and in the case of a State from which but one certificate had been received, no objection to its being counted could prevail unless such objection were sustained by the vote of both Houses of Congress voting separately. In the case, however, of any State from which more than one return or certificate had been received the act provided that in such case, upon objections made, all the certificates and papers should be submitted to the Electoral Commission for its judgment and decision as to which was the true and lawful electoral vote of such State, the decision of this tribunal to be final unless overruled by the vote of both Houses of Congress voting separately. The political complexion of the two Houses of Congress was such, the Senate being overwhelmingly Republican and the House overwhelmingly Democratic, that no objection to the counting of any given electoral vote could prevail and it would be impossible to overrule by the separate vote of the two Houses any decision of the Electoral Commission.

The method of procedure in the counting of the vote was to take up the certificates that had been received in alphabetical order of States, beginning with Alabama, and make a final disposition of the matter in regard to each State before proceeding further with the count. The two Houses met in joint session on February 1, and the count proceeded without interruption or objection until the State of Florida was reached. The several certificates from Florida were read, objections in writing to each certificate, signed by the required number of Senators and Representatives, were presented and read and the matter was forthwith transmitted to the Electoral Commission for decision. After argument by the objectors and counsel on each side the Commission rendered its decision on February 9, and on the 12th, at the joint session of the



two Houses, the vote of Florida was counted for the Republican candidates in accordance with the decision of the Commission. The count then proceeded in the presence of the two Houses of Congress without interruption until the State of Louisiana was reached, when the several returns from that State were read and, with all the objections, were forthwith submitted to the Commission. That body rendered its decision in the Louisiana case on February 16, and on the 20th the count proceeded in the presence of the two Houses. The case of Oregon was reached on February 21 and was immediately submitted to the Commission which rendered its decision on the 23d. The case of South Carolina was reached on February 26 and submitted on that day to the Commission. The following day the matter was argued and the decision of the Commission rendered. The count by the two Houses then proceeded and, after some futile efforts at delay, was finally concluded at four o'clock in the morning of Friday, March 2, 1877. The result of the count as announced by the presiding officer was to give 185 electoral votes to the Republican candidates, Messrs. Hayes and Wheeler, who were thereupon declared elected President and Vice-President for the four years beginning on March 4, 1877.

The decision of the Commission in all of the cases that came before it was based upon the broad general principles that, in the process of choosing a President under the Constitution, there was a distinct line of demarcation between those functions in the process attributed by the Constitution to the States and those that came within the province of the Federal Government, and that beyond this boundary line the two Houses of Congress assembled for the purpose of opening the certificates and counting the votes; and consequently the Commission, as having no greater powers than those conferred upon the two Houses of Congress under the Constitution, could not be permitted to pass. Under the Constitution the great political transaction of choosing a President, so far as the casting of the votes of the individual citizens, the canvass of the votes, and the determination and declaration of the result of such canvass were concerned, had been placed under the exclusive and plenary jurisdiction of the several States, acting subject to such rules as had been established by Congress to ensure a general

uniformity throughout the country as to time and method of procedure of the several persons chosen as presidential electors. The two Houses of Congress, assembled for the completion of the transaction by ascertaining from the returns to the seat of Government the number of electoral votes cast for the several candidates, would be transcending the powers and duties and rights accorded them in the transaction if they should be permitted to inquire into the conduct of the election in any given State or of the accredited State functionaries in the election itself and the canvass of the vote. As expressed at the time, Congress could not go behind the returns, an application of the Democratic doctrine of Federal non-interference with State rights that did not find a ready acceptance from the Democrats.

Each case coming before the Commission for decision was presented and argued by one or more of the objectors to the several certificates and also by counsel retained in the interest of the two political parties. The counsel engaged on the part of the Democrats, and appearing at some time or another in the proceedings before the Commission, were Messrs. Charles O'Connor, Jeremiah S. Black, Richard T. Merrick, Ashbel Green, William C. Whitney, George Hoadly, Matt H. Carpenter, Lyman Trumbull and John A. Campbell.

Mr. Evarts had been retained as leading counsel for the Republican party and associated with him were Messrs. Edwin W. Stoughton of New York, and Stanley Matthews and Samuel Shellabarger of Ohio. Mr. Evarts delivered the arguments that follow in the cases of Florida, Louisiana and Oregon. In the case of South Carolina the counsel for the Republicans were content to submit the matter to the Commission without argument.

## THE FLORIDA CASE

### NOTE

Of the three certificates of the electoral vote of Florida opened by the president of the Senate and submitted to the Electoral Commission for adjudication, that designated as certificate number 1, signed by the then Governor of the State, was regular in form and on its face complied with all constitutional requirements. This gave the electoral vote of Florida to the Republican candidates, Hayes and Wheeler. Neither of the other two certificates, both of which certified to the choice of Democratic electors and gave the vote of Florida to Tilden and Hendricks, appeared to conform to constitutional requirements. Certificate number 2, dated December 6, 1876, the day on which the presidential electors were by law to cast their votes, was a certificate signed by the Attorney General of the State and, as he describes himself in the certificate, "as such one of the members of the board of State canvassers of the State of Florida." The certificate stated that, by the authentic returns of the State board of canvassers, the Democratic electors had been chosen, and this was accompanied by the oaths of office of the four persons thus claiming to be the electors chosen, together with certificates of the vote cast by them for Tilden and Hendricks.

Certificate number 3 was still more irregular and embraced a recital of the judicial and legislative proceedings in Florida, subsequent to and growing out of the election, by which the Democratic managers had sought to bring the count of Florida's vote into the Democratic column. These proceedings were briefly as follows: On December 6, 1876, and immediately before the Republican electors had cast their votes, a proceeding in the nature of *quo warranto* was instituted against them in the Circuit Court of the State, on the relation of the Democratic electors to try the title to the office of presidential electors, which resulted in a determination of the Court on January 25, 1877, that the persons nominated on the Democratic ticket were the duly chosen presidential electors. These persons had already, on December 6, voted as electors and

their votes had been certified to by the Attorney General as stated above.

The election in Florida had been a national presidential election, and also one for State officials, and while the original canvass had returned the Republican candidate for Governor, Governor Stearns, to succeed himself, a re-canvass was ordered through a proceeding in the Florida Courts brought by the Democratic candidate which resulted in seating the Democratic candidate as Governor, viz., Governor Drew, who took office on January 1, 1877. When the Florida legislature had convened, an act was passed on January 17 "to procure a legal canvass of the electoral vote of the State of Florida as cast at the election held on the 7th day of November, A. D. 1876," and on January 26 a further act of the legislature was passed, declaring that Democratic presidential electors had, according to this new canvass of the votes, been duly chosen. Certificate number 3, signed by Governor Drew, January 26, 1877, recited the above facts and was accompanied with copies of the acts of the Florida legislature referred to, and a copy of the returns under the new canvass and a certificate of the Democratic electors as to their proceedings and vote in the preceding December.

The objections to certificate number 1, conveniently called the Hayes certificate, interposed by the Democrats, referred to all these proceedings and also to the report of, and the evidence taken by, the committee that had been appointed by the House of Representatives to investigate the election in Florida, which report had been submitted, with all the evidence, about February 1, 1877. There was also interposed, independently of the principal objections to the Hayes certificate, an objection to the eligibility to the office of one of the Hayes electors named Humphreys.

All of these papers coming before the Commission, that is, the three certificates and accompanying papers and objections thereto, and the several objectors having been heard, upon an oral presentation under the rules of the Commission, the question immediately arose, upon inquiry put to counsel, as to what evidence if any should be considered by the Commission in support of the several certificates. The question became formulated in the adoption by the Commission of the following motion of Mr. Justice Miller: "That counsel be allowed two hours on each side to discuss the question

whether any evidence will be considered by the Commission that was not submitted to the two Houses by the president of the Senate and if so, what evidence can properly be considered, and also the question, What is the evidence now before the Commission?"

In the interlocutory discussion preceding this ruling of the Commission, Mr. O'Connor had presented and read a memorandum of what the Democratic counsel expected to offer in evidence to break down the Republican certificate and support those of the Democrats. This embraced all the transactions in Florida referred to in certificate number 3 and also the wholly extrinsic evidence taken by the Congressional Investigating Committee. The extravagant claim had also been made by Judge Black that all these matters were already before the Commission as evidence by reason of the reference to them in certificate number 3, and in the objections made to certificate number 1.

This very important question as thus stated in the ruling of the Commission was, though preliminary to the main determination, crucial in its character, and as such was elaborately argued by the respective counsel. Mr. Merrick and Judge Black opened on behalf of the Democrats. They were followed by Mr. Matthews, Mr. Stoughton and Mr. Evarts in reply for the Republicans, and the argument was closed by Mr. O'Connor. The decision of the Commission is a matter of history. By a vote of eight to seven the Commission determined not to receive any evidence that was not submitted by the president of the Senate to the two Houses of Congress in joint convention with the different certificates, except such as related to the eligibility of Humphreys. On February 5, 1877, Mr. Evarts made the following argument on this branch of the Florida case.

### ARGUMENT

Mr. President and gentlemen of the Commission: The order of the Commission inviting the attention of counsel lays out for their consideration three topics:

First, whether, under the powers possessed by the Commission, any evidence beyond that disclosed in the three certificates from the State of Florida, which were opened by



the president of the Senate in the presence of the two Houses of Congress and, under the authority of the recent act of Congress, are transmitted to this Commission, can be received;

Second, if any can be received, what that evidence is; and

Third, what evidence other than these certificates, if any, is now before the Commission.

I will dispose of the last question in the order of the Commission first. It requires but brief attention to express our views sufficiently, and will, I think, require but little consideration, in point of time, however important it may be in substance, from the Commission.

It is suggested that certain packages of papers which were borne into the presence of the Commission by the messenger that brought the certificates and objections are *already* evidence in the possession of the Commission. What those packages contain, what degree of authenticity, or what scope of efficacy is to be imputed to or claimed for them as particular matters of evidence and particular forms of proof, is unknown to us and unknown to the Commission. The proposition upon which it is claimed that this evidence, whatever it may be—subject, undoubtedly, to discussion and to rejection by the Commission as not pertinent and not important and not authentic—the proposition is that, being mentioned in one of the objections interposed against the first certificate as matter on which the objection was founded, instead of being a warrant as it were to the objector which he vouches, he, the objector, thereby makes it a part of the evidence before the Commission; and our learned friend, Judge Black, has proposed that, except as against objectors who prevail in their arts and efforts in common-law courts and whom he has been polite enough to designate as “*snap-peradoes*,” this evidence is, by authentic principles of jurisprudence, made evidence by this attachment to this objection. He instances the case of a bill in equity which may

append exhibits and which, of course, brings the exhibits, as a part of itself, into the possession of the court. But that, thereby, they were made evidence any more than his bill, except upon such weight as should be imputed to them by the answer of the defendant admitting, or not denying, or establishing a rule of necessary contradiction by two witnesses, instead of one, I have never heard that the plaintiff made the exhibits evidence in the cause by appending them to his bill.

Now, the provisions of the recent act that at all touch this matter are very few. In the first place, the objections are not conclusive of anything. They bind nobody. They are merely the occasion upon which the reference to this Commission arises. If there be no objection, the case provided for the exercise of your authority is not produced. If the objection is made, however inartificial or imperfect, the case has arisen; but that the objection narrows and limits and provides the issue or affects the controversy upon which your jurisdiction attaches, is a pure fabrication out of utterly unsubstantial and immaterial suggestions in the law. Certainly, if volunteer objectors on one side and the other were permitted to lay down the issues, and adduce the evidence, and make up the packages of the evidence, it would be a strange commitment of your great authority to casual, to rash, to disingenuous suggestion.

So much, I think, entirely disposes of the question of whether there is any evidence here. The other question, as to whether evidence in the possession of either or both of the Houses of Congress, in the shape of committees' reports or conclusions of either of those great bodies, in any form, is transmissible, and may be proposed to this Commission and may be accepted and received by it after it is unfolded, after it is understood, after the paper is scrutinized and is opposed, is a question that is but a subordinate part of the main question, whether any evidence beyond the certificates can be received.

I wish to preclude, at the outset, anything that should carry for a moment the impression that there has been over-passed by some stroke of astuteness or of diligence the question of what you can receive and what you must reject. I find myself, then, unimpeded in the inquiry, as open to me as it is open to you, whether *any* evidence can be received, and, if any, what, beyond the certificates opened by the president of the Senate. On that question I shall think it quite attentive to the instruction of the Commission and much more suitable to a practical and definite discussion and a practical and definite determination by this Commission, that whatever of general principles, and however far-reaching the decision on those general principles in this matter of evidence may be, the evidence that is now actually proposed should be taken as the apparent limit of the inquiry whether evidence should be received, not from any particular defect as to form or manner of proffer, but as to whether it falls within evidence that may be received extraneous to, in addition to, the certificates opened by the president of the Senate. I am enabled by the memorandum presented by the learned counsel, Mr. O'Connor, which is found on the forty-second page of the Congressional Record of yesterday, to present the quality and character, the office and effort, of extraneous evidence that it is supposed might be, within the powers of this Commission, received and entertained by it.

In the first place, he excludes from the area of consideration one of the certificates, to wit, that which contains the vote of the Tilden electors; for that they need no extrinsic proof, and it is mentioned only that it may be excluded. Then, secondly, there are statements concerning the *quo warranto* suit in Florida, commenced on the 6th of December and ending on the 25th of January. In regard to that the record is supposed to contain in itself the particular means of its use according to established rules of jurisprudence

as a record or as an authority. It is suggested in respect to that, therefore, that extraneous proof only would need to reach the point of the precise hour of the day on the 6th of December on which the writ commencing that action was served, and on our part perhaps proof that an appeal had been taken from that judgment and is still pending.

Then are enumerated some other matters that require no proof, as it is supposed. Again, the acts of the legislature mentioned are public acts and matters of record; and it is supposed that they are regularly before the Commission, so far at least as they appear in the third certificate, by virtue of that transmission, and besides I suppose that they are matters of public record as the action of the legislature of the State.

We come now to the following:

Fifthly. The only matters which the Tilden electors desire to lay before the Commission by evidence actually extrinsic will now be stated.

1. The board of State canvassers, acting on certain erroneous views when making their canvass, by which the Hayes electors appeared to be chosen, rejected wholly the returns from the county of Manatee and parts of returns from each of the following counties—

Naming them.

In doing so the said State board acted without jurisdiction, as the circuit and supreme courts in Florida decided.

That is, by their recent judgments in *mandamus* and *quo warranto*.

“It was by overruling and setting aside as not warranted by law these rejections, that the courts of Florida reached their respective conclusions that Mr. Drew was elected governor, that the Hayes electors were usurpers, and that the Tilden electors were duly chosen. No evidence that in any view could be called extrinsic is believed to be needful in order to establish the con-

clusions relied upon by the Tilden electors, except duly authenticated copies of the State canvass, and of the returns from the above named four counties, one wholly and others in part rejected by said State canvassers."

MR. O'CONOR: That is your canvass that you rely on.

MR. EVARTS: So I understand. I was reading your language.

And of the returns from the above-named four counties, one wholly and others in part rejected by said State canvassers.

It is proposed, therefore, as the matter extraneous that it is desired to introduce, and that it is claimed is open to your consideration, not that the certificate of Governor Stearns falsifies the fact he was to certify; not that it falsifies the record that makes the basis of the fact which he was to certify; but that the record at the time on which, by law, he was to base his certificate, departing from which his certificate would be false, is itself to be penetrated or surmounted by extraneous proof, showing that by matters of substance occurring in the progress of the election itself errors or frauds intervened. This means that somewhere in the steps of the election between the deposit of the ballots in the boxes at the precincts and the original computation of the contents of those boxes there, and the submission to a correct canvass in a county of the precincts thus canvassed at their own ballot-boxes, or between the returns of the county canvass to the State canvassers, or in the action of the State canvassers in the final computation of the aggregates to ascertain the plurality of votes as for one or the other candidate, and so declare the result of the election, frauds or mistakes occurred. In other words, that in the process of the election itself, from stage to stage, on the very matter of right and on the question of the title *de jure* there has occurred matter of judicial consideration which should be inquired into here. For I need not say that, however simple and however limited



the step to be taken behind the record of the final State canvass, to serve the needs and to accomplish the justice as proposed by the learned counsel for the objectors against the Hayes certificate, the *principle* upon which this evidence is offered, if their occasions required it, if justice required it, if the powers of this commission tolerated it, would carry the scrutiny and the evidence to whatever point this complete correction or evisceration of the final canvass would demand.

I am at once, therefore, relieved from any discussion as practical in this case, except so far as illustration or argument may make it useful, *pro* or *con*, of any consideration whether a governor's certificate could be attacked as itself being not a governor's certificate, but a forgery. That is not going *behind* the governor's certificate. That is going in front of the governor's certificate and breaking it down as no governor's certificate. That is not the question you are to consider here. There is certainly no reason, on principle, that when a governor's certificate is required for any solemnity or conclusiveness of authentication, a forged paper should be protected because it is called a governor's certificate. Neither does their offer of proof suggest any debate as to whether *the fact to be certified by the governor*, the substance that his certificate is to authenticate, can be made the subject of extraneous evidence with a view to show that the fact to be certified is discordant with the certificate, and that the fact must prevail over the interpolated false certificate of the fact.

There can be no escape from this criticism on their offer of proof, unless our learned opponents ask your assent to a claim that when the act of Congress requires the governor's certificate as to the list of persons that have been appointed electors it requires from the governor a certificate that every stage and step of the process of *the election* has been honest and true and clear and lawful and effectual, and free from all exception of fraud. Unless you make *that* the fact to be

certified by the governor, you lay no basis for introducing evidence of discord between the fact to be certified and the fact that has been certified. Without disguise, therefore, the proposition is that, whether or no there might be occasion for extraneous proof to falsify a governor's certificate on the ground of its own spurious character, or on the ground of its falsely setting forth the fact professed to be stated, and admitting the governor's certificate to be genuine, and admitting the final canvass, duly filed and recorded, to be in accord with the certificate, this Commission stands at the same stage of inquiry and with the same right to investigate the election itself to the bottom as a judicial court exercising the familiar jurisdiction of *quo warranto*.

There is also a suggestion that extraneous proofs may be necessary on the point "that Mr. Humphreys, one of the Hayes electors, held office under the United States"; and, in our behalf, it is then suggested by the learned counsel that we might need to introduce evidence that he had resigned. The interposition of this objection was a surprise to us; for it was a matter of inquiry before the Florida State canvassing-board on the 4th day of December, 1876, antecedent to the completion of the final and conclusive canvass. The evidence thus taken I am able to read from page 32 of the Congressional Record of Saturday, in the report of the minority of the House Committee:

EXTRACT FROM TESTIMONY BEFORE THE FLORIDA STATE CANVASSING-BOARD, MONDAY, DECEMBER 4, 1876.

*Frederick C. Humphreys* sworn for the Republicans. Examined by the Chairman:

*Question.* Are you shipping commissioner for the port of Pensacola? *Answer:* I am not.

*Q.* Were you at one time? *A.* I was.

*Q.* At what time? *A.* Previous to the 7th of November.

*Q.* What time did you resign? *A.* The acceptance of my res-

ignation was received by me from Judge Woods about a week or ten days before the day of election, which I have on file in my office. I did not think of its being questioned, or I would have had it here. He stated in his letter to me that the collector of customs would perform the duties of the office, and the collector of customs has since done so.

On the nature of an objection for *disqualification* as a subject of proof before the two Houses or the president of the Senate, in their attribution of authority under the clause of the Constitution governing their joint meeting, a word needs to be said; and I will attempt at the same time to answer the inquiry made very pertinently and forcibly by Mr. Commissioner Thurman the other day.

There is, as I understand the matter (and I will not anticipate a discussion that must come later in this argument), a consideration in the first place of whether the Houses of Congress in the matter of the count, at the time of the meeting for the constitutional duty of opening and counting the votes, have any power by law for any intervention or any methods of extraneous proof. Whatever may be thought as to whether disqualifications of this nature were proper for the scrutiny of the votes to be counted, and however proper it might have been for Congress to provide by law for the production of extraneous proof in that transaction, and for the manner in which it might be adduced and considered, there is no act of Congress on the subject. Our proposition is that, at that stage of the transaction of the election, the two Houses cannot entertain any subject of extraneous proof. The process of counting must go on. If a disqualified elector has passed the observation of the voters in the State, passed the observation of any sentinels or safeguards that may have been provided in the State law; when these are all overpassed and the vote stands on the presentation and authentication of the Constitution—that is, upon the certificate of the electors themselves and of the governor—it must stand unchallenge-

able and unimpeachable in the count. Of course, the provision of means of inquiry at that stage by Congress, if they had thought fit to provide means, would have involved the delays of such inquiry, the proof of the alleged infirmity in the elector, and the counter-proof of its removal, all matters ordinarily manageable, perhaps in point of time not leading to much prolixity, but still, in supposable cases, involving contradiction of witnesses and discussion as to the effect of testimony which would involve delay.

Mr. Commissioner Thurman asked this question: "Suppose that the electoral vote, when opened, disclosed the fact that the four electors were then present members of Congress, and had been such members at the time of appointment as electors, what then?" That involves an element, you will perceive, that is not touched by the considerations that belong to proof. That impeachment of qualification in the electors supposed is of ocular and personal observation at all times by the President of the Senate and by the two Houses of Congress, and is of record at the Capitol. But if the instance is merely that of a member of Congress not presently a member and thus involving extraneous proof of his retirement from the office in season to qualify him for appointment as elector, then the case falls back into the class of cases which I have just considered, where there has been no provision for extraneous proof, and where the office accorded to the governor's certificate cannot be over passed without extraneous proof. There is, as we suppose, no safe rule, except to say that this injunction laid upon the States, that they shall not appoint the excluded persons, does not execute itself under the Constitution, and if unexecuted in the laws of the State, is only to be executed by laws of Congress providing the means and time and place for proof and determination on the fact of disqualification. This is all that I need to say on the question of personal disqualification.

I have said that this Commission cannot receive evidence

in addition to the certificates, of the nature of that which is offered; that is, evidence that goes behind the State's record of its election, which has been certified by the governor as resulting in the appointment of these electors. One reason of this proposition, and on which sufficiently it rests, is that that is a judicial inquiry into the very matter of right, the title to office. This inquiry accepts the prevalence of the formal, the certificated, the recorded title of the electors, and proposes then to investigate as *inter partes*, as a matter of right, which of two competing lists of electors is really elected on an honest and searching canvass and scrutiny of the State election. It undertakes a function that is judicial; and the powers for its exercise are attempted to be evoked by their necessity for the exercise of the function assumed. What are adequate means? Adequate means for that judicial investigation are plenary means. No means are adequate for that inquiry that are not plenary. But no plenary judicial powers, no plenary powers for inquiry into fact and determination of law judicially, can be communicated by Congress except to tribunals that are courts inferior to the Supreme Court, and that are filled by judges appointed by the President of the United States and confirmed by the Senate. Will any lawyer, expert or inexperienced, mention a topic or method of judicature, of jurisprudence, that involves the possession of means of larger reach and a more complete control of powers than the trial of a *quo warranto* for an office that is to search an election? But not only is it beyond the power of Congress to transfer to this Commission the powers of a court of this plenary reach and efficiency, but on the topic of *quo warranto* to try the title of an office they would find a *subject* of jurisdiction in regard to which the Constitution had interposed an insurmountable barrier to its devolution on a court like this. The *quo warranto* is a matter and an action of the common law. It involves as matter of right the introduction of a jury into its methods of trial. No title



to office on a contested election was ever tried without a jury. The seventh article of amendments to the Constitution requires that in suits at common law the right of trial by jury shall be preserved, and their verdict shall never be re-examined in any court of the United States except by the rules of the common law.

I may ask your attention, in connection with the topic that I last discussed, and in pertinent relation to the present, to the case of *Groome vs. Gwynn*, in 43 Maryland Reports, 572, especially at page 624. This case shows that this argument, that a duty attributed by law or the Constitution must carry to itself, in the functionary charged with its exercise, all the powers necessary, upon the ground that the duty must involve the powers, finds no place in our jurisprudence; the argument is the other way. If the functionary, if the Commission has not been clothed with the necessary faculties, then the duty is not accorded or, the means of its exercise not being furnished, it cannot be discharged. There the governor had, by the State constitution, the power to determine a contest for the elective office of attorney general of the State of Maryland. The governor, finding by his own inspection of the constitution that he lacked the means of carrying out the scrutiny that must decide, held that he could not exercise it and he would not exercise it, unless compelled by judicial authority. The court of appeals, on an application for a mandamus to compel the governor to give the certificate to the candidate appearing to be elected by the canvass, held that he was vested by the constitution with an authority to decide the contest, but that the laws of Maryland had not executed the constitution by furnishing him with powers to perform the duty assigned to him, and that the mandamus must go against him to compel him to deliver the certificate to the candidate that, on the fraudulent election, was returned as having the plurality of votes. Thus the preliminary contest before the governor that might

have been effectual to redress the frauds of the election, was defeated for want of necessary legislation. The contest could only be had under the judicial powers of the State lodged in the Courts, and in the shape of *quo warranto* on a suit against the inducted candidate that the governor might or would have decided not to be entitled to take the office.

I find in this act of 1877 no such purpose in the arrangement of this Commission or its endowment with powers as to make it a Court under the Constitution. I find no appointment of these judges to this Court under the powers of the Constitution. I find no means provided for writs and their enforcement, nor for the methods of trial that must belong to a discussion on a *quo warranto*. Now, I understand that the proponents of this proof lay out as the nature and the limit of your inquiries, of your duties and your powers, that of judicial investigation upon *quo warranto*. Mr. Representative Field assigned to you what he described as "powers at least as great as of a court on *quo warranto*," and, of course, in that nature. Mr. Merrick claimed the same. Judge Black did not in terms, yet in assigning the nature and the searching character of the transaction that you are to enter upon, gave it that character and implied that demand. The brief handed in by Mr. Green, in the praise of which I am happy to join with his learned associates, makes the claim distinctly that you are not adequate as a revising canvassing-board, but you must have the powers of a court on *quo warranto*. And why this claim if anything less magnificent and anything less intolerable could have been found sufficient area for your action as desired? It is because in the methods and machinery of elections, as they insist, the steps are onward, from one canvass to the next, and if you are made only a superior canvassing-board to determine whether Governor Stearns's certificate that these electors were appointed is valid, and you are nothing but a returning-board, surmounting the final returning-board to

see whether their returns justified that certificate, that, at once, you must find that it does, that the *de facto* title and possession are complete, and that nothing but a jurisdiction that concedes the *de facto* title and possession can begin, can find the case for beginning, the consideration of the question of right. This *quo warranto* suit in the Florida Court, if it becomes a subject of evidence, declares absolutely, on the petition of the Tilden electors, that the Hayes electors are in possession of the faculty, the office, or whatever it may be, and are exercising it, and they ask that an inquiry may then proceed in due course of law to inquire whether that possession and that exercise, as matter of right, between them and the Hayes electors, are or are not according to law and truth.

And the Commission will be good enough to look at an act, not reprinted in the little collection of the acts so usefully laid before us, of February 2, 1872, in the laws of Florida, in relation to the proceeding upon writs of *quo warranto*. The general statute of procedure excludes any possible writ of *quo warranto* except by the State through the action of the attorney general, and this *quo warranto* suit begins by evidence that the attorney general refused to bring the writ for the State, and that led to an inquiry how it happened that it was brought at all, and to the discovery of this law of 1872, providing that when the attorney general refuses, then the claimants may make themselves relators and use the name of the State; but in such case the suit is a mere private suit, that is good between the parties, but does not affect the State. It is in terms so provided, and it is provided that the judgment shall not be a bar to a subsequent suit by the attorney general in the public right. So much to explain that situation.

MR. COMMISSIONER BRADLEY: Will you give us the page of the session laws?

MR. EVARTS: Page 28 of the session laws of 1872.

There is but one other point that I wish to call to the at-

tention of the Commission in the legislation of Florida, for I can spend no time to rehearse the statutes. On page 53 of the pamphlet that has been printed for the use of the Commission there are found sections 31 and 32. One is a provision that—

The secretary of state shall make and transmit to each person chosen to any State office immediately after the canvass—

showing that the canvass as completed is the basis of the State's authentication of the right of every State officer—

a certificate showing the number of votes cast for each person, which certificate shall be *prima facie* evidence of his election to such office.

That gives him the office.

Subsequent inquiry is as to the final right. Then section 32:

When any person shall be elected to the office of elector of President and Vice-President, or Representative in Congress, the governor shall make out, sign, and cause to be sealed with the seal of the State, and transmit to such person a certificate of his election.

That is the State's final designation of the person that has been appointed an elector under the Constitution of the United States. Had these contestants any such authentication of their right, and have they proposed any such evidence of right as in existence on the 6th day of December? Have they questioned the completeness of the Hayes electors' warrant to attend and discharge their duty that clothes the vote when cast with the complete qualification under the State laws and the State's action? We have the governor's certificate—and he is the very person that passed officially upon that question which furnishes the authority to the electors to meet and act—that this is the list of the electors appointed. *Omnia præsumuntur rite acta*; but there is no

presumption needed here. These certificates under the State law form no part of the return to the president of the Senate; but when the same governor executes under Federal law the same duty and upon the same evidence as under State law, we have in his certificate, now here, adequate authentication of the completion of the transaction by which the State appointed the Hayes electors.

Now we come to consider the general doctrine as to what the powers are, and what the arrangement and disposition of those powers are, under the Constitution of the United States, in the transaction of choosing a President. In the first place, the only transaction of choosing a President begins with the deposit, so to speak, in the Federal urn of the votes of certain persons named and described in the Constitution as electors. From the moment of that deposit the sealed vote lies protected against destruction or corruption in the deposit provided for it, the possession of Federal officers in Federal offices. The only other step, after that, is the opening of those votes and their counting. All that precedes the deposit of the votes by electors relates to their acquisition of the qualifications which the Constitution prescribes. Those qualifications are nothing but *appointment by the State*, and with that the act of Congress and the Federal Constitution, with due reverence to State authority, do not interfere. It has been provided under a rule of prudence that the electors shall all be appointed on the same day in all the States. It has been provided that they shall meet and cast their votes on the same day. The latter provision fixes a duty in the transaction of *voting for President*. The other is the only intrusion upon State authority in the absolute choice of the time and manner of appointment; Congress may prescribe that the time of voting shall be the same in all the States, and Congress has so prescribed.

What are we to gather in respect to the stage of this transaction which is the deposit of the Federal vote for President



by the qualified electors? It is their own vote. They are not delegates to cast a vote according to the instruction of their State. They are not deputed to perform the will of another. They are voters that exercise a free choice and authority to vote, or refrain from voting, and to vote for whom they please; and from the moment that their vote is sealed and sent forward toward the seat of Government no power in a State can touch it, arrest it, reverse it, corrupt it, retract it. Nothing remains to be done except count it, and count it as it was deposited. The wisdom of the secret ballot and of its repose in the possession of the president of the Senate secures the object, *ut nihil innorescat*. The vote is to be opened and counted, in contemplation of law, as freshly as if it had been counted on the day it was cast, in the State.

These electors, at our present election three hundred and sixty-nine citizens in number, not being marked and designated by any but political methods, are by the Constitution made dependent for their qualification upon the action of the State. If the State does not act there are no qualified electors. If the State does act, whatever is the be-all and the end-all of the State's action up to the time that the vote is cast is the be-all and the end-all of the qualification of the elector, and he is then a qualified elector depositing his vote to accomplish its purpose, and to be counted when the votes are collected.

Our ancestors, whom we revere—let us not at the same time despoil them of their right to our reverence—were not wanting either in forecast or in circumspection in this provision. Every solicitude, every safeguard that a not very credulous view of human nature could exact for the supremacy of the Constitution in this supreme transaction under it was provided. At the bottom of everything was a determination that this business should proceed to fill the office; that that terror of monarchies and of republics alike, a vacant or a disputed succession to the occupancy of the Chief Magistracy, should not possibly exist.

Let me find for you those constitutional limitations upon the supposed *quo warranto* procedures that were to cover investigations into thirteen or thirty-eight States before the votes could be counted. Why, the *second substituted election*, on the failure of the first, must end by the 4th of March. What room is there to interpolate *quo warranto* proceeding in any stage from the deposit in the primary ballot-box in the State up to the counting of the votes which declares a President elected, or the failure to elect, upon which the States resume their control through their delegates in the lower House of Congress upon the basis of State equality? The substituted election must come to an end by the 4th of March; and whoever introduces judicial *quo warranto* anywhere in the transaction introduces a process of retardation, of baffling, obscuring, of defrauding, of defeating the election, and gives to the Senate, by mere delay, the present filling of the presidency with an acting officer and *compels* a new election. That much for delay. Now it is an absolutely novel proposition that judicial power can put its little finger into the political transaction of choosing anybody to an elective office.

The bringing into office a President, bringing into office a governor, bringing into office any of the necessary agents of the frame and structure of the State, without which in present action it will be enfeebled and may fail, is a political action from beginning to end. It comes to furnish a subject of judicial *post hac* investigation only after it has been completed. If judges are to intrude and courts with their proceedings at the various stages that are to be passed in the business of filling the office, so that there shall be no vacant and no disputed succession *de facto*, who does not see that you introduce the means of defrauding and defeating the political action entirely, and turning it into a discussion of the mere right that shall leave the office vacant till the mere right is determined?

It is an absolute novelty, unknown in the States, unknown

in the nation, that judicial inquiries can be interposed to stop the political action that leads up to the filling of office. The interest of the State is that the office shall be filled. Filling it is the exercise of a political right, the discharge of a political duty. Such safeguards as can be thrown about the ballot-box, about the first canvass, the second canvass, the third canvass, the final canvass in the States, about the final counting before the two Houses, and that shall not retard or defeat the progress to the necessary end, are provided. These are provided; these are useful; but you do not step with a judicial investigation into a ballot-box upon a suggestion that it has been stuffed, and stop the election till that *quo warranto* is taken; and then when you get to the first canvasser stop his count from going on, because it is a false count, and have a court decide, and so with the county canvassers, stop their transaction in the rapid progress to the result aimed at, to wit, filling the office, with a *quo warranto* there, and then in the State canvass, and then here. It is an absolute novelty. No judicial action has ever been accepted and followed except the mandamus to compel officers to act, nothing else. That was not retarding; that was ascertaining; that was compelling; that was discarding delays on the question of right.

In our Supreme Court in New York, not very many years ago, an attempt was made to obtain an injunction against inspectors canvassing votes, the primary deposit in the ballot-box of their election-district, because they had been sworn on the directory and not on the Bible. They had no right to discharge their function without taking an official oath, the preliminary oath. The Court refused it necessarily. However much this irregularity might find play and place in a *quo warranto* investigation of the whole transaction, piecemeal inquiry cannot be made and no injunction of a Court can intrude into the course of the political action of an election.

The position that I have assigned to the States is the appointment as they please. Now, let me call your attention to a provision in the act of Congress, the application of which may not have occurred to your observation. It is provided in the act that if the State shall have failed to appoint on the day for appointment, it may make a subsequent appointment as the legislature may please. It was not intended, then, that the process of finding out whether there had been an election or not should, by its method and its regular action, be exposed to frustration. Even the failure itself, disclosed by the political canvass, was the basis on which the State was renewedly to exercise its right in time for transmission here. Now, you have in this act of Congress a provision which shows that they recognized that the method of progress and result was to be cherished above all others that its success might end in time to confer the qualifications or its failure in time that the substituted appointment reserved to the States should be accomplished.

But now it is said that a failure of election may be retarded in its declaration so as to deprive the State of its power to act on that failure, and it is said that by the act of Congress the contemplated ascertainment may involve judicial proceedings in the State. Why, if there be anything that in election laws is provided in every State, it is that there shall be no reconsideration, no steps backward, no delays except of ministerial and apparently easy duty; and if discretion is given, by departures from that general policy in particular States, it is always found to have its origin in a motive of correcting a special mischief for which it is framed, some abnormal condition of the body-politic that requires a departure from the general method of absolute ministerial transaction. Our proposition, as has been laid down so well by my learned associates, is that, under the State law of Florida, that is the method, that is the purpose, that is the action, and that every step and stage of that action, rightly or wrongly, hon-

estly or dishonestly, purely or fraudulently, has conferred qualifications such as the Federal Constitution requires in the appointment by the State through the methods that it had provided.

If support were needed for the point that the line of demarcation between the inception of the Federal authority and the culmination and consummation of the State's action precludes an inquiry, at the furthest, beyond the facts certified as of record and the accuracy of the certificate, it is to be found in the legislation proposed in the Congress of 1800, when the wisdom was still of the fathers. Enlightened by their experience of the working of the great scheme they had framed, it was declared that the demarcation should be observed, and that the powers should not include nor be deemed to include *any inquiry into the votes as cast in the States*.

The novelty, as I have said, of the situation produces strange results. Never before has there been the retardation of the political transaction of counting an election, and to accomplish that almost a miracle has been needed, for the sun and the moon have been made to stand still much longer than they did for Joshua in the conflict in Judæa. You will find that an attempt to bring judges—I do not now speak of judges in the official capacity that some portion of this bench occupy in the Supreme Court, but I mean judges in the nature of judicial function and its exercise—into the working of this scheme of popular sovereignty in its political action, will make it as intolerable in its working, will so defraud and defeat the popular will, by the nature and necessary consequences of the judicial intervention, that, at last, the government of the judges will have superseded the sovereignty of the people, and there will be no cure, no recourse but that which the children of Israel had, to pray for a king.



## THE FLORIDA CASE

### ARGUMENT ON THE PRINCIPAL QUESTION

Upon the decision of the Commission, limiting the evidence that would be considered in the Florida case and after taking testimony on the question of the eligibility of the elector Humphreys, the argument proceeded on the principal question of what certificate should be adjudged the true return to be counted as the vote of Florida. Mr. George Hoadly and Mr. Ashbel Green opened the argument for the Democrats; Mr. Shellabarger and Mr. Evarts addressed the Commission in reply, and the argument was closed by Mr. Merrick. The arguments of counsel on the main question began and ended on February 8, 1877. Mr. Evarts spoke as follows on this branch of the case:

Mr. President, and gentlemen of the Commission: The wisdom of the method and order of this examination adopted by the Commission has fully proved itself in its execution. The intelligent and experienced and learned minds acting in the Commission saw at once that the decisive lines of the controversy were to be determined upon the limitation of their powers and the limitation of the subjects and the means for producing those subjects upon which those powers were to act. In the full discussion accorded to counsel, and in the deliberations of the Commission extended during the periods of their private session, the result is disclosed in this form and to this effect, that this Commission will receive no evidence, and will merely inspect the certificates that the Constitution and the laws of the United States have authorized for transmission, and, as such, received by the President of the Senate, have been opened to the two Houses, save in one particular, that in aiding them to inspect these certificates, and, within the limits of the information there disclosed, determine and advise the two Houses of Congress how many and what

votes shall be counted for the State of Florida, it will receive evidence touching the eligibility of one of the named electors appointed. In that determination I do not understand the Commission to have overpassed the question, what the effect is as to the acceptance or rejection of a vote thus challenged for ineligibility, but to have decided that on that point they will receive the evidence that may be offered in order that they may determine in the first place whether upon the facts the exception taken to Humphreys' vote is maintainable; and secondly, whether, if maintainable and maintained upon the facts, the methods of the Constitution and the duty now presently being discharged permit of any rejection from the certificated vote transmitted and opened of the vote of an elector upon that ground.

I will first deal with the question of fact. I call the attention of the Commission to the proposition that the point of exception under the Constitution, the matter proposed of disqualification under the Constitution, is simply this: that at the time of his appointment he filled an office of honor or emolument under the United States. I except to the mode of proof as to its effect when it stops where it did, that was used by the excepting party to his qualification, that they used a commission of the date of 1872 and proved no occupation of the office later than August, 1876. I understand that when, under the certificate of a governor, the vote of a State is in the very process of counting, to be questioned in the presence of the two Houses of Congress, no exception that shall proceed for its prosperity upon the power of the exceptor to find an old commission and then take advantage of the unreadiness or want of notice that the exception was to be raised is admissible, to argue from the ancient case that all things remain as they were until contradicted. The danger of that proposition in a transaction of this nature can be at once discerned. Let whosoever will take up the burden of proving that on the 7th day of Novem-

ber one of these certified electors having the warrant of the seal and authority of the State as having been elected was disqualified for that election, he must prove it down to and as of that day. But when the proof stops there, the neighbor, the friend, the lawyer whose dealings are to fill out with living effect the dead commission, stops with his necessary proof in the month of August, you have failed to find that actual possession and use of the office, even presumptively, beyond the date, for no reason was given in the witness's evidence why his knowledge stopped there unless the action of the officer stopped there. You must dispose of this question of fact upon some method of strictness suitable to the nature of the transaction in which you are engaged and suitable to the exercise of the duty, not under an organized and arranged Commission like this, but as an ordinary discharge of constitutional duty by the two Houses in their joint convention; and I submit that there is no claim, the proof there stopping, that it is to be regarded as a challenge which requires the fact that he was in office on the 7th of November to be presumed.

I now come to the counter-proof, supposing that that step is passed; and the counter-proof, not challenged in form, comes to this: that early in October Humphreys resigned, in writing, his office to the circuit judge of that circuit, and received from him an acceptance of the resignation, such judge proceeding to instruct him to turn over whatever of public means for the exercise of the office he held to the collector of customs, who would discharge the office, such judge at the same time advising the collector of the accepted resignation and of the devolution of the office upon him, followed by the evidence of Mr. Humphreys that thereafter, from the early day in October, he himself discharged no part of its duties and held out no professions of capacity to discharge them, and moreover that the collector from that time thenceforth until after the period of inquiry, the 7th of No-

vember, and perhaps till now, occupied the office and discharged its duties.

Upon this plenary and apparently conclusive proof, an objection is made that as the appointment was made by the circuit court, the resignation could only be made to and received by the Court in session, and that no such session having taken place, within the meaning of the Constitution of the United States which prescribes as a qualification for an elector that he should not exercise an office under the United States, Mr. Humphreys was an officer of the United States on the 7th day of November. Now, this office had no term whatever prescribed by statute; it had no enlargement by necessity or by prescription beyond the present will of resignation. The office itself was secured for the public by no clause requiring it to be occupied and exercised until a successor was qualified. There was no need of the office being refilled. The act took care of the service by prescribing that when there was no officer of this kind the collector should discharge the duty of this act of Congress.

Upon that state of law, in view of the existing legislation of Congress on the subject of resignations to which I shall call your attention, is it to be pretended for a moment that there was any power to hold an occupant of that office to the performance of its duties one moment beyond his will? Can it be pretended that, beyond the necessity of the conveyance of the resignation as determining that will, executed and placed in the power of the authority thus made its depository, he could be held under any law, if there had been any, or his sureties under any law or jurisprudence enforcing the obligations of sureties, for the failure to perform acts or to do duties after his office was thus resigned?

Besides, look at the nature of this disqualification as proposed to the voters in the State of Florida and those who produce the candidates and name them to be voted for. Is the title, the paper-title back in the archives of courts or

offices, to be searched for by electors in determining whether their fellow-citizen, Mr. Humphreys, shall receive their votes? They know who are in the possession and in the exercise of offices under the Government of the United States by their action, by their public possession and exercise of office; and now when Mr. Humphreys, to the knowledge of his neighbors in Pensacola and the community throughout the State of Florida, is out of his office, and its constant duties are performed by another from and after the date in October, are they to lose the effect of their suffrage by the production of a certificate that in 1872 he held the office? I think not.

I have said I would ask your attention to the only provisions in the statutes of the United States that bring their bearing upon the question of resignation; and they are found at three pages of this volume—233, 251, and 277.

MR. COMMISSIONER ABBOTT: Are you quoting by pages or sections?

MR. EVARTS: Pages.

MR. COMMISSIONER ABBOTT: The Revised Statutes?

MR. EVARTS: Yes. They relate only to resignations of military officers or enlisted soldiers in the nature of desertion. Now, under a scheme of law that from the foundation of the Government until now has never lifted finger to restrict the right of citizens to retire from office at their mere will, who shall say that within the property of this electoral qualification and this count of it on this evidence any question is to be made?

But the authorities seem to be very clear as to the right of resigning without even acceptance. In section 260 of Mr. McCrary's book I read:

Where the law requires an officer resigning to do so by a written resignation—



Where the law in terms requires an officer resigning to do so by a written resignation—

to be sent to the governor, it is not necessary that the governor should signify his acceptance of a resignation to make it valid. The tenure of office, in such a case, does not depend upon the will of the executive, but of the incumbent.

MR. COMMISSIONER ABBOTT: Is not that a case where the law expressly provides that the office may be resigned by the party by a written resignation without any acceptance?

MR. EVARTS: I have not examined the law.

MR. COMMISSIONER ABBOTT: I think you will find it so.

MR. EVARTS: It is spoken of as a law which requires a resignation in writing. This careful commentator quotes it as a law that requires "an officer resigning to do so by a written resignation."

A civil officer has the absolute right to resign his office at pleasure, and it is not within the power of the executive to compel him to remain in office.

And the authorities for this are given in the first volume of McLean's Reports, page 512, where that learned judge says:

There can be no doubt that a civil officer has a right to resign his office at pleasure; and it is not in the power of the executive to compel him to remain in office. It is only necessary that the resignation should be received to take effect; and this does not depend upon the acceptance or rejection of the resignation by the President. And if Fogg had resigned absolutely and unconditionally, I should have no doubt that the defendant could not be held bound subsequently as his surety.

This was a question of suretyship. There is a case in California, *The People vs. Porter*, 6 California Reports, 27. "Resignation of office" is the head-note. "A resignation is effectual without its acceptance by the appointing power."

You will observe that under this condition of law, all the circumstances of this office making its application a necessary result from the nature of the office and the tenure not limited in any way, all that was necessary was to make a permanent vacation of the office, evidenced by the conduct of the resigning officer, and followed not necessarily by any necessary proof, but if followed by the public possession and discharge of the office by another, it took the officer out of his place within the disqualification or qualification concerning it.

I might refer to a very important proposition made by Mr. Manager Hoar on the impeachment of Mr. Belknap, found on page 62 of the Record, volume 4, part 7, of this Congress, the two concluding paragraphs on the first column of that page. I will not occupy time by reading them; but it was there laid down by the authority of the House of Representatives through their managers that in this country the acceptance of a resignation was not essential to vacate office, and that the English authorities to the contrary turned upon the peculiarity of their laws and their system which exacted maintenance of office against the will of an officer.

MR. COMMISSIONER HOAR: With the exception there stated, that of the class of offices which a person could be compelled by mandamus to accept.

MR. EVARTS: So I understood; but that was drawn from the English cases.

MR. COMMISSIONER HOAR: And the early New England cases. The office of constable a person could be compelled by mandamus to accept.

MR. EVARTS: But there it was I believe contended, certainly it is matter of public knowledge and history, that in the United States service there are no such civil officers; and no pretense of any such obligation has been set forth. We have been satisfied to rest upon the working maxim of our politics that none resign.

Now, I will consider, and very briefly, the question of ineligibility made apparent by proof *aliunde*, as bearing upon the question whether the vote is to be omitted in the count. That question, if not open for discussion, will nevertheless occupy me but a very brief period, and I must assume that it is open, that there has been no determination that ineligibility made to appear by extraneous proof would lead to the rejection of the vote. This clause of the Constitution, which simply prescribes an exclusion from the office of elector, left open to the appointment of the States, of persons filling seats in Congress or occupying office under the United States, is a clause of the Constitution not executing itself and not executed by law; and when, therefore, in the presence of the two Houses, the transaction commences of counting the presidential votes, no objection of that kind can be heard or entertained, because Congress has not filled out the legislation necessary to provide the means of adducing proof in advance, one way and the other, and the effect that is to be given to the presence of a disqualified elector. Let me call your attention to a case of the greatest weight in all our discussions of matters before the Supreme Court—the case of *Groves vs. Slaughter*, in 15 Peters; I read from page 500. Look at that question as it was presented. The Constitution of Mississippi contained this provision:

The introduction of slaves into this State as merchandise or for sale shall be prohibited from and after the 1st day of May, 1833.

After that date they were imported for sale; they were sold; and the buyer gave his notes for the price; and the question was whether the notes could be collected. The Courts of Mississippi held that they could not; and the Supreme Court of the United States, with but two dissenting judges, held that the constitution did not execute itself and that until legislation was provided that was to have that

effect, it was not executed. The Court had the advantage in their decision of the arguments of the ablest men at the bar; Mr. Clay and Mr. Webster both appeared in this case and other very eminent lawyers. At pages 500 and 501, Mr. Justice Thompson, giving the opinion of the Court, said:

Admitting the constitution is mandatory upon the legislature, and that they have neglected their duty in not carrying it into execution, it can have no effect upon the construction of this article. Legislative provision is indispensable to carry into effect the object of this prohibition. It requires the sanction of penalties to effect this object. How is a violation of this prohibition to be punished? Admitting it would be a misdemeanor, punishable by fine, this would be entirely inadequate to the full execution of the object intended to be accomplished. What will become of the slaves thus introduced? Will they become free immediately upon their introduction or do they become forfeited to the State? These are questions not easily answered. And although these difficulties may be removed by subsequent legislation, yet they are proper circumstances to be taken into consideration when we are inquiring into the intention of the convention in thus framing this article. It is unreasonable to suppose that, if this prohibition was intended, *per se*, to operate without any legislative aid, there would not have been some guards and checks thrown around it to secure its execution.

Now, suppose this injunction of the Constitution is mandatory on the States not to appoint as electors those who are within the prescribed disqualification, Congress has not undertaken to execute it; the States have not undertaken to execute any procedure by which votes for disqualified persons shall cause the failure of the vote of the State. They have provided no means; none have been exercised here; and I submit to this Commission that, laying down, as you must, a rule that is suitable to the ordinary and orderly and unretarded progress of the proceedings of the two Houses, when the President of the Senate opens the certificates, and, dealing only with the certificates as your judgment about evi-

dence is they must deal unless in this particular, you must hold that in this particular also, unless there be statutory provisions of the United States or of the State purging the lists, you must count the vote that the State sends forward and that its governor certifies, where there is no question of objection of any other nature, which, of course, the case now being considered contains. You are undertaking to deal, in the process of counting the vote, with a question to be settled by fact antecedent to the appointment, and you are exposed to a final and irrevocable rejection of a vote from the mere casual impression or uncertainty of evidence.

This subject, then, being rejected from a further consideration, I understand there is no matter left but for the execution by this Commission of the duty accorded to it by the act of Congress under which it is organized, to determine out of the materials of these three certificates what and how many votes are to be counted for the State of Florida.

The first certificate is subject to no criticism. You have rejected all means whatever of questioning it by evidence as to what occurred before the vote was cast, before the vote was certified by the governor, or after either of those parts of the transaction up to the time of the counting. No fact can intervene. This vote, then, is to be counted, not because it is the best that is seen, but by the absolute fullness of its title in complying with all the laws that have been imposed by Congress concerning the complete verification of a certificate. The fact certified is not gainsaid by proof, for it is excluded. There was no offer of proof between the fact of the canvass closed and recorded and the governor's certificate.

This certificate then includes, with every degree of certainty and assurance, the votes of the State of Florida, and there are four votes here, and there is room for no more. To make it, therefore, of any practical importance in the further discussion, there must be apparent on the two other certifi-



cates either such disparagement of the first or such authenticity in the latter as should displace the one and substitute the other, or there must be such production of rival and competing certificates as leaves the Commission to rest in doubt and uncertainty as to which votes are to be counted.

Now, as you will not allow evidence outside of this first certificate as bearing directly upon its actual affirmative authenticity and sufficiency, you will not allow any evidence collaterally on the mere presentation or support of any other certificate. If another certificate comes here that, by its own credit, is made superior to ours, it displaces it. If it is made equal to ours, then there are two certificates, and then you must determine which of the two, or whether either, is entitled to consideration. That leads me to ask attention to these other certificates, so called. By the only certificate that relates to an apparent act in the election of President of the United States on the part of the State of Florida, it is shown to have been wholly without authority of law, and this second certificate, so far from competing with the first or disparaging the first, confirms it in all respects; in the first place negatively, for it wants the certificate of the executive that is prescribed; in the second place, by an entirely superfluous and worthless paper, so far as the Constitution and laws of the United States are concerned and so far as the laws of Florida are concerned, of an attorney general of that State, having no more power or authority to certify anything about the election than the commander of the militia of the State, carrying therefore on its face no invitation to your hospitality and excluding itself from consideration by its being wholly without legal support in the laws of Florida and wholly unrecognized under the Constitution and laws of the United States.

But if you treat it as a paper, read it for what it says. It shows you that the recorded canvass as it lay in the secretary of state's office was the only transaction in that election that

the governor of the State by its laws could certify to, and that his certificate rested upon that fact and could not be questioned for reason of its not observing the executive duty. Let me ask your attention to the true result of this certificate, as was well and firmly stated by my associate, Mr. Stoughton, when he said that it showed that it would have been a violation of duty on the part of the governor of the State of Florida to have certified or looked at anything else, provided you take this attorney general's certificate of what the law is. He describes himself as an attorney general, and by virtue of that office, one of the members of the board of State canvassers of the State of Florida, and he undertakes to certify "that, by the authentic returns of the votes cast in the several counties of the State of Florida, . . . said returns"—that is, the county returns—"being on file in the office of the secretary of state, and seen and considered by me as such member of the board of State canvassers of the said State of Florida, it appears and is shown" that the four gentlemen named "were chosen the four electors of President and Vice-President of the United States."

And I do further certify that, under the act of the legislature of the State of Florida establishing said board of State canvassers, no provision has been enacted, nor is any such provision contained in the statute law of this State, whereby the result shown and appearing by said returns—

That is, the county returns—

to said board of State canvassers can be certified to the executive of the said State.

If that is not as complete an exclusion of the possibility of there being any reliance or resort by the laws of Florida on the part of the executive to any of this evidence, these returns, or any part of them, what could supply such a conclusion? And when you look at the law of Florida already brought to the attention of the Commission, you find that, as a part and the final part of the transaction of appointing electors.

the canvassers having made their report, it is the governor's duty thereupon to issue his certificate to the electors thus shown to be elected, which is the final warrant by the State of Florida of their appointment and the justification of their action in voting.

I come now to a third certificate, so called, and we are to proceed to inquire whether there is anything on that which disparages or overtops the paramount authority of the first certificate. In regard to this certificate, I say that it is a paper having no warrant whatever under the Constitution or laws of the United States or of the State of Florida—I mean the laws of the State of Florida as they existed when the appointment was completed and when the vote was cast and certified and transmitted here. It is a posthumous certificate of *post-mortem* action, never proceeding from any vital or living college of electors, but only by the galvanic agency of interested party purpose, taking effect after the whole transaction was ended. I submit to your honors, without making any imputation as between political parties, that the inspection of this certificate shows that, the transaction having gone on and been completed within the purview of the Constitution and the laws of the United States and the laws of the State of Florida, a government, coming into being on the subsequent 1st of January by the change of political parties, undertakes to undo what has already been done.

That proposes (without offense to the arrangement of the two parties in this transaction) that one party was in possession of power during the procedure of the transaction and was succeeded by a change of party. It would be just the same if the reverse situation in the names of the parties were concerned. If it can be done, then all the care and all the wisdom and all the contrivances that are to make this transaction in the States final at some point, certifiable at some point, and in some manner and by some officer, are to go for nothing, if when there are new officers, new interests, new

legislators, by either or all the powers of the changed government, the vote that has been deposited can be corrupted, subtracted, obscured, or substituted; if the legislature, governor, judiciary, all enter into the transaction that is to substitute for the deposited vote of the State a vote that they presently seek to deposit, or that its efficacy, if not adequate for its own counting, shall displace the counting of the completed transaction.

This certificate, opened by the President of the Senate, and by that mere act therefore laid before the Houses of Congress, and transmitted here, when the contents are opened and read, is shown to be no certificate under the Constitution of the United States or the act of Congress or the laws of Florida in existence at the time of the casting of the electoral vote of that State within its borders. It is, under the aspect and the cover of a certificate, transmitted to the President of the Senate, connected with the election, made the vehicle of carrying into the physical presence and power of the two Houses, and thus of this Commission, what is utterly nugatory, utterly ineffectual, utterly unauthorized by any provision of the Constitution. You cannot count that, then, as an electoral vote. Nobody pretends that that certificate, coming here on the 31st of January, reciting legislation not completed, I think, until the 26th, and some *quo warranto* judgment referred to that was terminated on the 23d or 17th—the dates are utterly immaterial—is a paper that the President of the Senate was by the Constitution required to receive. It is not a paper that is a certified vote of a State. It is not a paper that can carry any means of furnishing you with the vote of the State to be counted. So in respect of evidence it is wholly without authority. It will be observed that the certificate of Governor Drew, by public knowledge shown to have come into his office on the 1st of January or later perhaps, but the term of his office dates from then, undertakes by authority of an act passed

January 17, 1877, which had ordered a new "canvass of the returns of said votes on file," which canvass "was, on the 19th day of January, made according to the laws of the State and the interpretation thereof by the supreme court," to recite that four gentlemen named "were duly determined, declared, and certified"—that is, by these canvassers taking up the transaction in January under a law passed in January, and making a scrutiny ending on the 17th—"to have been elected electors of President and Vice-President of the United States for the State of Florida" at the past election in November, "as shown by said returns"; and it further recites that—

In a proceeding on the part of the State of Florida by information in the nature of *quo warranto* wherein the said Robert Bullock, Robert B. Hilton, Wilkinson Call, and James E. Young were relators, and Charles H. Pearce, Frederick C. Humphreys, William H. Holden, and Thomas W. Long were respondents, the circuit court of this State for the second judicial circuit, after full consideration of the law and the proofs produced on behalf of the parties respectively, by its judgment determined that said relators were at said election, in fact and in law, elected such electors as against the said respondents and all other persons:

Now, therefore, and also in pursuance of an act of the legislature entitled "An act to declare and establish the appointment by the State of Florida of electors of President and Vice-President of the United States," approved January 26, A. D. 1877, I, George F. Drew, governor of the State of Florida, do hereby make and certify the following list of the names of the said electors chosen, appointed, and declared as aforesaid, to wit:

The certificate required was a certificate to be delivered to the college of electors at or before the day, and that is the only certificate which can have any force; and here we have a certificate of a governor who was not governor at that time.

Then, besides, we have all that is here stated, absolutely *post hac*, subsequent to the transaction, and only allowed to present itself on the 31st day of January just past, to have



some influence upon the transaction that had been completed and been certified; and that when the two competing certificates of the rival electors had been finished and placed in possession of the President of the Senate long before this authority arose. What becomes of the authority in Congress, exercised under the Constitution, to say that the votes shall all be delivered on the part of the States on the same day? Is not that a substantive provision? Is not that to hold that Congress by the Constitution was given concerning the deposit of the electoral vote? Certainly it was. What becomes of the provision of the act of Congress, justified by the Constitution, that the elections or other methods of appointment that the State may use shall be on the same day? What does it mean? Does it mean anything? Did our fathers trifle upon question of punctilio and order? No. If it means anything, it means that it must be done on one day, that it shall not be undone on any other day. It is to be done on one day; it is to be finished on one day; and they would laugh at the triviality of the wisdom of their successors in the great places of the Constitution, the Senate, and the House and the great judges of the land, if on the first occasion that it became necessary or at all effectual to undo, it should be held as constitutional law that when it was provided it should all be done on one day, that meant that after what was done was known, and after the importance of undoing it was understood, and after the change of parties or the ambition of human nature made it important to undo in separate parcels and at various times what had been supposed to have been concluded and made sacred in the deposit that the Constitution had assigned for a finished transaction, that courts, that legislatures, that governors remote from responsibility, or seconded in their transgressions by the opinion of party and the applause of political interests, should have the fingering of every vote for President until the counting was concluded.

What are the prodigious claims here? That by a lawsuit, and a lawsuit in a State court, begun and ended it may be afterward, begun if you please before but ended afterward, by virtue of that transaction the State's completed vote is to be retrieved and reversed; and that when a justice's court of the first instance has so decided, as my learned brother, Mr. Green, has said, the courts of the United States make a low obeisance to Mr. Justice White, and say, "That is the end of the law; that is the *fiat* of the State." Well, supposing that we had succeeded in counting a President in under *quo warranto*, justified under the Constitution and the laws as they now are or that shall be opened by legislation to the tribunals of the country, and suppose that then a *quo warranto* is started to prove that the President in his seat should be dislodged because some of the votes counted for him were not by *de jure* electors, and then it is proposed that the decision of the State court is "the be-all and the end-all" of that inquiry; that whichever of these candidates takes his seat as President of the United States in a situation of evenly balanced elections, his continued possession of the Federal office is upon the judgment *post hac* of a State court that holds, whenever a *quo warranto* comes to an end by due procedure of their laws, that the title of the President that acquired the count of the votes of Ohio or of New York was a miscount, a count of spurious votes, so held and determined by the State in the independence of its judiciary passing upon the question. What sort of a government, what sort of a presidency, what sort of muniments and protections of regularity and permanence of authority under the Constitution are provided by a scheme of perpetual four years' dependence upon a *quo warranto* in the State of Nevada or of Florida? You then must never lose sight of the matter, that you are to advise what votes and how many shall be counted by the two Houses that stand in a present duty, never intended by the Constitution to be interrupted by a day or by an hour. When

you have determined that evidence shall not invade the regularity of the finished transaction of the State or defeat the regularity of the certification under the acts of Congress at the time when the votes are sealed up in their packages and transmitted—when you have determined that that shall not be invaded by extraneous evidence, you have determined as by a double decision that it shall not be invaded, disparaged, or exposed to any question by a mere certificate that is its own agent and author and volunteer in disturbance of the counting of the votes.

## THE LOUISIANA CASE

### NOTE

The State of Louisiana, during the reconstruction period following the Civil War, fell into a condition of politics approaching anarchy. The resistance of the native white population to the new order of things was more marked by turbulence and lawlessness than in any of the other States of the South. At the time of the Presidential election of 1876 both the Republican and Democratic parties claimed the right of possession and control of the State government. The *de facto* governor, the nominee of the Republican party, was William P. Kellogg. Recognized by every department of the Federal Government and sustained in his occupation of the office by the military forces of the United States, Kellogg was the actual governor of the State, exercising all the functions of the office. This was also the case of the other offices of the State Government; they were all in the possession and control of the Republicans. The Democrats had made vigorous claim to the governorship and had even inaugurated their candidate, John McEnery, into office, and while the Democrats had been obliged to surrender the possession of the government of the State to the Republicans McEnery continued to claim the governorship *de jure*.

In this situation of political affairs there were forwarded to the seat of Government three sets of papers purporting to be certificates of the electoral vote of the State. Certificate number 1, appearing on its face to be in every way regular and authentic, was signed by Governor Kellogg, and certified to the electoral vote of the State as having been cast for the Republican candidates. Certificate number 2 was signed by John McEnery described as Governor of the State of Louisiana, and gave the vote of Louisiana to the Democrats, through the action of the Democratic candidates for electors claiming to have been duly elected and casting their votes as electors on the day prescribed by the Federal law. Certificate number 3 was similar in form and contents to certificate number 1 and had been forwarded to the seat of government subsequently to certificate number 1 to correct some supposed formal error in

the first certificate. The fact was, however, known to but few persons at the time, that certificate number 3 was far more vulnerable than certificate number 1.

The objections to certificates numbers 1 and 3, interposed by the Democrats, were many and were for the most part directed towards the conduct of the election and of the returning board of Louisiana that had charge of the canvass of the votes. The authority and jurisdiction of the returning board had been conferred by the various statutes passed by the Louisiana legislature. These statutes were in some state of confusion as to their ultimate effect, owing to repealing clauses in the several acts and the adoption by the State of a revision of the statutes in 1870.

These objections were in substance as follows:

1. That the government of Louisiana was not republican in form.
2. That Kellogg was not governor.
3. That at the time of the election there was no law of the State directing the appointment of electors.
4. That so much of the election law which was in force as related to the returning board was unconstitutional and void.
5. That the board was not constituted according to law, having only four members of one political party, when there should have been five members of different political parties.
6. That the board had acted fraudulently in their methods of counting the votes, in discarding some returns and in counting others and in other specified ways in the performance of their duties as a board.
7. That two of the electors certified by Kellogg were ineligible at the time of the election, by holding office under the Government of the United States; and that others were ineligible by holding State offices, and that Kellogg could not legally certify himself as an elector.

The objections to certificate number 2, interposed by the Republicans were brief and to the point. They were in substance that there was no evidence that the persons named in the certificate as electors had been appointed in such manner as the legislature had directed, and that there was conclusive evidence that the persons named had not been so appointed; that there was no evidence that McEnery, who signed the certificate, was at any time governor of



the State and that the evidence was conclusive that Kellogg was such governor at the time of the election and of signing the several certificates.

After the several objectors had been heard, the argument of counsel on behalf of the Democrats was opened by Mr. Matt H. Carpenter of Wisconsin. He was followed by Mr. Lyman Trumbull who presented in an extended argument the several offers of evidence to be submitted to the Commission in support of the Democratic objections. They were followed in the order named by Mr. Stoughton, Mr. Shellabarger and Mr. Evarts in behalf of the Republicans, and the argument was closed by Mr. John A. Campbell of Louisiana in behalf of the Democrats. In accord with the principle that had controlled in the Florida case, the Commission excluded all consideration of the evidence offered and decided that the vote of Louisiana should be counted for the Republican candidates. On February 15, 1877, Mr. Evarts delivered the argument that follows:

#### ARGUMENT

MR. EVARTS: Mr. President and gentlemen of the Commission: The general subject of controversy before the Commission is, how this Commission, under the powers conferred upon it and in discharge of the duty confided to it by the act of Congress under which it is organized, shall advise the two Houses of Congress, in the discharge of their duty under the Constitution of the United States in counting the votes for President and Vice-President, what votes shall be counted for the State of Louisiana. The Constitution has undertaken to determine that the State shall have the power to appoint electors as its legislature may direct, and no authority or argument can disparage or overreach that right of the State. That right is in the State. It is not a gift from the Federal Government, for there was no Federal Government to give it. It is not carved out of any fund of power and right that the Federal Government possessed, for the Federal Government had no general fund of power or right out of which it could carve a gift to a State. The

State of Louisiana stands in this behalf as one of the original thirteen States stood. Whatever was the right of one of the original thirteen States in the election of Washington, is the right of Louisiana now in the election of a President. And, therefore, it is not to be measured as a gift, not to be measured by its relation to any general fund of authority on the subject that the United States had and which it has limited, but as one of the original conditions, one of the original limitations, one of the original distributions of power out of which and by which combined comes the Government of the United States and exists the government of each State as a member of the Union.

This topic at once leads us to consider wherein the Constitution of the United States has established and how it has distributed the authority of choosing a President of the United States, what part of it is administered and administrable as the action of the Federal Government, and what part of it is administered and administrable as a part of the State action in the matter. On the terms of the Constitution is this demarkation to be drawn and adhered to? And in this regard, as well as in every other respect of power, are the maxims of the Constitution as to construction concerning the line drawn to be observed as well as in any other? The Government confers nothing upon the States. The Government comes into existence by and through the States and their people. The location of authority is primarily in the State, and is in the General Government only by its allotment in the terms of the Constitution. There is, therefore, the same method of construction and interpretation in drawing the line and in maintaining its defenses in this matter of the election of President as in all others. Whatever the Federal Government has in this matter of the election of a President, it has by force of terms in the Constitution; and whatever the State has, it has upon the same terms; and then the ninth and tenth articles of the amendments

made soon after the adoption of the Constitution apply, that there is to be no disparagement of rights that are reserved by rights that are conferred, and that whatever is not conferred upon the Federal Government by this Constitution, and is not forbidden to the States, is reserved to the States or to the people.

It is not for me to repeat the arguments made by my learned associates so well, and by me, so far as I could aid them, in the general discussions which were presented under the Florida case. These general propositions were that the whole matter of creating the elector belonged to the State; the whole matter of ascertaining, accrediting, setting forward with credentials, belonged to the State so far as the text of the Constitution read; and that whatever the statute of 1792 had sought to prescribe in the matter of these credentials was directory and for the convenience and instruction of the body that was to count the votes, as to the fact of the action of each State; that the elector was not an officer of the State; that in no very considerable sense could he be treated as an officer of the United States; that he was an elector, having the right under the Constitution of the United States to vote for President, and that he was a representative elector, and was to be measured only to discern whether he was deputized to act as an agent or whether he was accredited with the voting power to vote as an elector having the suffrage in his hands. To say that he is a representative elector because he comes to be the elector in representation of a participation in the government of a State, comes to nothing more than to say that you, members of the two Houses of Congress, are representative legislators. You are representative legislators. You are legislators in a Government resting upon the will of the people and on its communicated authority to you as representatives; but you are not deputies to derive your instructions and authority from a principal at home. You are representatives of the legisla-

tive authority, lodged theoretically in the people, and in the theory of representation possessed by you in the same plenary power that the people themselves would have exercised it.

It was then announced as our proposition, that after the appointment of the elector, the vote, and the title to vote, and the exercise of the right, and performance of the duty, to vote on the part of the elector had come under the exclusive dominion of the Federal Constitution; the representation, so far as it entered into the creation of the title and the conferring of authority, had been exhausted.

In the Florida case, as here, these considerations had their weight and were accepted or declined by the different members of the Commission, according to their estimate of the Constitution and laws of their country. In that case, as in this, there were present before this Commission matters of consideration, about which, as open entirely for your inspection and necessarily forming a part of your determination, there was no question—I mean the papers that were opened by the President of the Senate, according to the Constitution, in the presence of the two Houses of Congress. They are before you under the law of 1877, as they were before that assemblage in that presence under the Constitution without the law of 1877, and now the question as to what more is or can be before you is a question under the law of 1877, as interpreted by its own terms in the light of the Constitution of the United States. It has passed beyond dispute; we did not dispute it in the Florida case; and, if we are to receive the intimation of Mr. Justice Bradley, it has passed beyond dispute in your own deliberations, as receiving the concurrence of all, that you have the powers that the two Houses have in the act and transaction of counting the votes, and no other powers; not that you have the powers that the two Houses of Congress together or separately have as the legislature of the country; not that you have any of

the powers that either of them separately has in respect to what is accorded to either of them separately in the Constitution outside of legislative power.

You have no particle of any authority that is lodged in the two Houses of Congress under any of the general grants of authority to them as the legislature or to either of them separately, except what is granted by the Constitution within the very terms of this article, that the transaction being completed in the States and they having forwarded their votes hither under such authenticity as entitles them to the first reception and brings them into the presence of the two Houses of Congress that their contents may be disclosed and acted upon, whatever action thereupon proceeds by the two Houses there met or by the two Houses separating in the discharge of and in the continued exercise of the function of counting the votes, this is passed over to you that your advice may be given to them, as it would proceed out of their original, their independent deliberations and construction if they had limited themselves to the conduct of the counting of the votes in the simple terms of the Constitution. They then proceed to count. They count the votes. Having made a law unto themselves, which they cannot transcend without its repeal, this instruction as to what votes ought to be counted under the Constitution of the United States they will act upon as determining what votes under that Constitution ought to be counted unless their united judgment shall contravene this great authority they have given to you.

We insisted, therefore, in the Florida case that one great consideration in determining what the powers of Congress were in this mere procedure was what the nature of the procedure was, what the constitutional objects and solicitudes in providing for the transaction had indicated as the will of the people when they adopted the Constitution of the United States, and we were met by very learned and very authoritative statements from very eminent lawyers.



Mr. Field, in behalf of the House of Representatives, proposed to you that you had at least the powers of a court on *quo warranto*. Mr. O'Connor, with that accuracy and precision and acceptance of all logical results that proceed from his statements, demanded the same authority; insisted that otherwise the correction of frauds, the redress of violence, the curbing of excesses of authority would be remediless, and yet in their nature being festering wounds in the body-politic would work its ruin.

Those demands we met; those demands we answered. And now, without one particle of change in the law, the Constitution, or the area of this debate, we are told by the responsible representatives of the Houses of Congress through their objections and by the eminent counsel that have thus far put forth their positions, that you have no judicial power whatever; that we were quite right about that; there could not be any judicial power outside of the courts inferior to the Supreme Court, the judges whereof were appointed by the President and confirmed by the Senate, and holding their offices for life upon a stated compensation. Why might we not have been saved the former discussion if we are to enter upon this with any great trust in its soundness or its permanence? Obedience to the conclusions of this Commission as requiring this shifting of ground in our favor would be a respectable support for the manœuvre, but I have not heard that assigned as the reason why the argument in the Florida case was abandoned and an independent and inconsistent one proposed here.

Now, what is the power? It is what is called a legislative power that is supposed to reside in this Commission in determining how it should advise that the votes should be counted, it being a legislative power in the two Houses. Now, there are quite as many constitutional objections to a legislative power vested in this Commission or a legislative power resting in the two Houses of Congress in the matter of

counting the votes, as there are to any other form or description of power. The legislative power, the great principal power of the Government, is vested in those Houses when they act in such concurrence as the Constitution requires before any legislation is effected. It is not, therefore, in that sense that our learned friends attribute legislative power either to the two Houses or to you. It is in the sense of a political power, of political action in a political transaction, and those are the limits that we had assigned in our argument of the Florida case to any possible powers of the two Houses, to wit, that in a transaction of election which starts from the primary polling-places and proceeds to the point of developing and accrediting the elector up to the scrutiny, so far as it is open here, and the counting of the electoral votes (not of votes *for* electors, but votes *of* electors), it was all a part in the series of movements that had for their purpose the transaction of the political act of bringing into office a President of the United States; and that the two Houses of Congress, under the Constitution as it reads, must discharge, when the President of the Senate opened the certificates, that duty on those certificates alone, unless by some prior legislation of Congress—putting in execution, and thus interpreting, some other powers that they assumed to possess, in their construction of the Constitution—Congress had provided legal means for the exercise of such further powers. The terms of this act carefully observed the limitation that this act was not to be interpreted as carrying any congressional powers that were determined and created by the act or any interpretation to be put upon it in its own terms, but that this act was to carry only such powers as were in the two Houses under existing law, and as solely determinable by the Constitution and existing law.

As a primary consideration, then, as in the Florida case, it is to be determined not as an abstract question. Let me ask the Commission to consider that it is to determine, not

what hypothetical proofs might be received, but what proofs within the offers are rightfully to be received and added to the elements and funds of proof which the papers opened by the President of the Senate themselves disclose.

What then is the offer of proof, not in its details, but in its principles? What is the state of proof as presented on the certificates in aid or supplement or contradiction of which this proof *aliunde* is to be introduced? The first certificate contains in itself every certainty and every conclusive credential that the laws and the Constitution of the United States or of the State of Louisiana prescribe. This certificate also discloses a special state of facts concerning two of the electors who cast their votes; I mean Levissee and Brewster; this special state of facts, that being among the electors that were voted for and that were covered by the governor's certificate, when the electoral college met they were not in attendance; that the statute prescribed that their attendance should be waited for until four o'clock in the afternoon of the day, and that for non-attendance by itself and of itself alone on the part of any person chosen or accredited by the action of the State authorities, the vacancy thus created should be filled by the acting electors; that at that moment, on that fact, the college of electors proceeded and chose these same men, who thereafter on that title took their seats in the electoral college and voted, and are to be counted or disparaged on that showing, to wit, the entire showing of this certificate opened by the President of the Senate.

Beyond that there is not in this argument about evidence any particular circumstance that I care to call attention to in regard to that first certificate; nor do I need certainly to make any addition to the observations already made to discuss the second certificate at all.

What proof, then, is offered? I now proceed to discuss it as matter of proof as to its application and where its effect, if at all, is to be expected.

In the first place, the offers of proof do not seek, any of them, to disparage the truth of that certificate; I mean its truth as made up of the elements of the governor's certification of the fact in the State's action that he is to certify, nor any impeachment of the transaction which by the certificate is shown to have taken place in the election. No proof offered touches that space in the transaction, or questions the governor's right to certify, his right by being governor to certify, or that the fact in the culminating and recorded result of the election in the State comports with the fact that he did so, nor on the point that Brewster and Levissee came into the electoral college on the transaction preserved in the minutes of the electoral college as presented here. If we look at the offers of proof, we see that at once. So far from introducing, therefore, any element of proof that is to separate the governor's certificate from the thing certified, or that is to disparage the governor's right under the Constitution of the United States, these offers of proof expressly concede that condition of things, and plant themselves wholly upon something antecedent in the State's transaction to this action of the governor, and which is the occasion of this action of the governor, to wit, the action in the State which produces the recorded result on which the governor must certify.

In the first place, we are saved any question, and I think we might have been saved any argument, about Governor Kellogg's being a *de facto* governor, filling the office and performing its duties, for they offer under their first head to prove "that said Kellogg was governor *de facto* of said State during the months of November and December, A. D. 1876." Then, when you come to other offers concerning the disqualification of Levissee and of Brewster, found on the seventeenth page, you will observe that there is not the least proposition that on the 6th day of December, when these two men came into the office of elector by the choice of the elec-

toral college filling the vacancies, they were under any disqualification whatever. The proposition is—I read now from what is called the fourth proposition—

That on the 7th day of November, A. D. 1876, A. B. Levissee, who was one of the pretended college of electors of the State of Louisiana, . . . was at the time of such election a court commissioner of the circuit court of the United States for the district of Louisiana.

And for Brewster in the same way. The offer of proof, then, falls entirely short of disparaging their capacity to receive an election on the 6th day of December, and the proof does not offer to contradict the transaction by which they came in through the vote of the electoral college as displayed in the certificate.

Now, in regard to the substantive matters of proof, so far from being obliged to rest upon the proposition that there is no offer to intervene with proof between the recorded result of the election and the governor's certificate to that result, as producing these electors and no others, the offers of proof are affirmative in their propositions that that state of facts does exist, and is part of the things that they are able and ready to prove. I ask attention to this principal offer of proof, which is, I suppose, the one on page 13, the last paragraph but one on the page:

And the said returning-board, in further pursuance and execution of said unlawful combination and conspiracy, knowingly, willfully, falsely, and fraudulently did make a certificate and return to the secretary of state that said Kellogg, Burch, Joseph, Sheldon, Marks, Levissee, Brewster, and Joffrion had received majorities of all the legal votes cast at said election of November 7, 1876, for presidential electors, they then and there well knowing that the said McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross had received majorities of all the votes cast at said election for presidential electors, and were duly elected as the presidential electors of said State.



And that the said returning-board, in making said statement, certificate, and return to the secretary of state, were not deceived nor mistaken in the premises, but knowingly, willfully, and fraudulently made what they well knew when they made it was a false and fraudulent statement, certificate, and return; and that the said false and fraudulent statement, certificate and return, made by said returning-board to the secretary of state in that behalf, was made by the members of said returning-board in pursuance and execution of, and only in pursuance and execution of, said unlawful combination and conspiracy.

We have, then, in the offers of proof a recognition of the fact that the governor's certificate in number 1 is by the acting governor of the State; that it is of a fact which has been deliberately produced and made of record in the proper office of that State; that by the authority intrusted with that final act of canvass and certification these electors did receive a majority of the legal votes in the State of Louisiana; that that was done *mala fide* and fraudulently. It was then done. The act was consummated. You are relieved, therefore, from any disturbance of this definite and limited proposition of whether it is competent for the two Houses of Congress to penetrate the action of the State and determine, first, whether it conforms to the real facts of the election as deducible through successive steps from the deposit of the votes in the ballot-box; and secondly, whether, though conforming to legal authority, it has been a corrupt, *mala fide* transaction.

It is necessary for us, then, before we can approach definitely the consideration of whether any of this proof can be offered, to understand at least what the laws of Louisiana are; not that it will follow that we have any right here to consider the conformity of the action of the canvassers or any of the subordinate functionaries in the election or of the voters themselves to that law, but that we may see at least upon what state of statutory enactments these objectors seek to base their question of the action had in these subordinate departments of the transaction.

I confess to an inability to understand that there should really exist any confusion on this subject as to what the statutory enactments in force—I mean on their face—were. This election, as it took place on the 7th of November, in the primary deposit of the votes, was concluded later in the year by the final result of the canvass certified and recorded. Some confusion, I am afraid, has been made out of the attempt to shorten a little the reprint, so useful in all particulars, made under the direction of the Commission. I have before me the session laws of 1868. In the acts of that session are found two independent acts on independent subjects, both of which were in force until either or both of them were repealed. They were not inconsistent; and they were not *in pari materia*, unless so far as that some portion of an enactment that might have been included in a general law, and was not, was included in the special or particular law to which I shall call attention. The first of these acts is found at page 218 of the session laws and is numbered 164. Its title is “Relative to elections in the State of Louisiana and to enforce article 103 of the Constitution of the State.”

MR. COMMISSIONER THURMAN: Where is that in this pamphlet which has been printed for us?

MR. EVARTS: I do not think it is there. Subsequent laws that are supposed to have taken its place have been printed, but this has not been printed at all. A portion of the revised statutes is printed, and somebody has put at the top of it “laws of 1868.” It is not a print of any part of the law of 1868. It is a reproduction of certain sections of the revised statutes which were passed in 1870.

MR. COMMISSIONER ABBOT: It was stated to us that this revision and the law of 1868 were precisely the same.

MR. EVARTS: I will proceed with my argument, if you please, because my object is to show exactly how the thing does run. That law printed on that page is not any part of the law that I have asked your attention to thus far; it is

not a reproduction of that; it has nothing to do with it. There is another law of 1868.

MR. COMMISSIONER BRADLEY: That law is a general election law.

MR. EVARTS: A general election law to enforce article 103 of the Constitution. On page 245, No. 193, is another law, of which I will read the title, to wit: "Relative to presidential electors." That is a short act. It contains in its first section an attribution of the conduct of *their* election to the provisions of the general election law:

And such election shall be held and conducted in the manner and form provided by law for general State elections.

MR. COMMISSIONER BRADLEY: Mr. Evarts, while you are on that, I wish to ask a question for information. I have tried to get hold of those acts of 1868 for about twenty-four hours, but have been unable to do so. Does that first section commence in this way: "In every year in which," etc.?

MR. EVARTS: It does.

MR. COMMISSIONER BRADLEY: And the thirty-fifth section of the act of 1868 is in the same terms exactly. These two are copies of one another, are they not? I wish to ascertain that fact.

MR. EVARTS: I will look. The thirty-fifth section of the act of 1868?

MR. COMMISSIONER BRADLEY: Yes.

MR. EVARTS: No; that comes into the act of 1870, if at all. There is nothing of the kind in the act of 1868. There is section 32 of the act of 1868, which I will read. I will read not section 35, but section 32, which relates to the subject.

MR. COMMISSIONER EDMUNDS: Which of these two acts do you read from?

MR. EVARTS: The general election law of 1868, which begins on page 218 of the session laws of that year.

MR. COMMISSIONER THURMAN: What is the date of it?

MR. EVARTS: It is the 19th of October, 1868. This is section 32, which is probably the section to which Mr. Justice Bradley had reference.

That in every year in which an election shall be held for electors of President and Vice-President of the United States, such election shall be held on the Tuesday next after the first Monday in the month of November, in accordance with the act of the Congress of the United States approved January 23, 1845, and such election shall be held and conducted in the manner and form provided by law for general State elections.

Which is, I believe, an accurate statement.

MR. COMMISSIONER BRADLEY: An exact copy.

MR. EVARTS: It is identical with the first section of the presidential-electors statute. Now, in this presidential-electors act there are two provisions which do bear on the questions which we are to discuss as to the proper method of carrying on, certifying, and canvassing the election held last November. There is no doubt about that, if they were in force, and I will ask attention to them. The first is section 4 on page 245 of the session laws of 1868:

Immediately after the receipt of a return from each parish, or on the fourth Monday of November if the returns should not sooner arrive, the governor, in the presence of the secretary of state, the attorney-general, a district judge of the district in which the seat of government may be established, or any two of them, shall examine the returns and ascertain therefrom the seven persons who have been duly elected electors.

Then there are certain administrative provisions which are not important.

Then section 8 on the same page.

MR. COMMISSIONER BRADLEY: It speaks of "seven persons" there.

MR. EVARTS: That word is there; the State then was entitled to seven electors. The eighth section is:

If any one or more of the electors chosen by the people shall fail from any cause whatever to attend at the appointed place at the hour of four p. m. of the day prescribed for their meeting, it shall be the duty of the other electors immediately to proceed to ballot to supply such vacancy or vacancies.

Our learned and ingenious friend, Mr. Carpenter, brought your honors to this result from his discussion, that it was wholly immaterial to the practical result in this case whether you hold that the law was repealed or whether you hold that it was in force; he contending that, if it was repealed so as to carry down the canvassing section, and therefore make the canvas proper by this canvassing-board—I mean in respect to its authority—then section 8, being carried down, the power to fill vacancies did not exist, and two vacancies were therefore left in the college of electors, which, as he said, would be enough for his purpose, and which is true; two vacancies are enough, perhaps one. But we are under no such alternative as that. By the subsequent laws, the canvassing section was repealed, and by no subsequent laws was the rest of the electoral act affected. That is a proposition which at once liberates us and this Commission from any confusion or from any resort to either of the horns of the dilemma.

On what does our proposition rest?—for it needs but to be stated to be understood, and the laws need but to be pointed out to carry the evidence of what the existing state of law was in Louisiana in 1876. There came about in 1870 a revision of the statutes of the State of Louisiana, not a repeal, not a re-enactment, but a revision of the laws that were or were understood to be in force, in regard to which the *fiat* of the legislature was to be impressed upon them that they were the laws in force, a transaction entirely similar to that which took place in Congress in the production of the Revised Statutes of the United States, under which we now are. In this revision which I read from, a book published in 1876—



MR. COMMISSIONER BRADLEY: I have the original.

MR. EVARTS: We shall be greatly obliged to you if we can get the pages from that. My friend who provided this book could not find the other in the library; we were obliged to resort to this; but the sections, as I understand, are the same. I shall be very glad to refer to that volume instead of this for those two laws, and I will give the citations as they shall be determined; but for the purpose of my present argument, without giving pages, I can now say how the matter stood on these revised statutes. In the first place, there was a statute entitled "Elections," and it was, we will assume, the statute of 1868. So far as I know, there is nothing to be said on this subject.

MR. COMMISSIONER EDMUNDS: You mean by that, that there is a head in the revised statutes "Elections"?

MR. EVARTS: A head in the revised statutes called "Elections." I will now give the page, to avoid confusion, that is found in this edition of the revised statutes of Louisiana printed in the year they were passed, in 1870. It is page 272, and it is headed in the margin by these figures, "1868, 218," which means this law that I have read.

MR. COMMISSIONER GARFIELD. The same reference that you made to the session acts of 1868.

MR. EVARTS: The same reference. Then there comes, after exhausting, I believe, the general provisions about elections, grouped under this general title of "Elections," a statute concerning contested elections, which in the same manner is referred to as a statute of 1865, page 408.

MR. COMMISSIONER EDMUNDS: Is that in the same title?

MR. EVARTS: The same title.

MR. COMMISSIONER BRADLEY: Under the same title, but at the end.

MR. EVARTS: Exhausting the general election law, you then come into an independent subject, and that is "Contested Elections," and there is reprinted another law not

material for us to consider, but it is reprinted and referred to as a law already in existence.

MR. COMMISSIONER THURMAN: Are you reading from the revised statutes of 1870?

MR. EVARTS: I am; and the edition of 1870, which is the proper one to refer to.

MR. COMMISSIONER THURMAN: Was that passed as one act?

MR. EVARTS: Passed as one act. Then we have another title in these revised statutes separated by one hundred pages, and indeed the arrangement is, I think, alphabetical, and the title of this section of the revised statutes is "Presidential Electors." That is at page 550. It begins by reciting the acts of Congress, and then it proceeds in ten sections, numbered from 2823 to 2832, which contain the election law, and the heading in the margin of this is "1868, 245." Nine of the sections, to 2831 inclusive, are embraced in that notation, and in fact in the act of 1868 section 2832 is noted as a section proceeding from the act of 1855, 481, and is simply, "when a new parish shall be established, it shall form a part of the district to which it belonged previous to its change of organization."

Those two laws, being for our purposes as the two laws of 1868, were in force when these revised statutes came into operation, unless by actual repeal, or by the methods of legislation which operate repeal, before these revised statutes went into operation, a repeal of one or the other of them in some part had taken place. These were passed on the 14th day of March, 1870; and on the 16th day of March, 1870, a law was passed, which was printed and is to be found in the first edition of this compilation which is without a cover, and I will refer to the act of 1870 itself in pursuance of my previous intention.

MR. COMMISSIONER EDMUNDS: Is there any law or provision of the constitution in Louisiana which provides

generally at what time acts passed at a session shall take effect?

MR. EVARTS: I do not know whether there is or not.

MR. COMMISSIONER BRADLEY: These acts that we refer to, all declare the time when they shall take effect.

MR. EVARTS: I do not understand that there is any general provision, and as a matter of fact the general declaration of the acts is that they shall take effect from and after their passage. There was passed in 1870, on the 16th day of March, an act which is found in the session laws of 1870, at page 145; it is numbered 100. I will read the title of this act:

To regulate the conduct and to maintain the freedom and purity of election; to prescribe the mode of making and designate the officers who shall make the returns thereof; to prevent fraud, violence, intimidation, etc.; limiting the powers and duties of sheriffs; and to enforce article 103 of the Constitution.

The title of this act is the same as that of the election act of 1868 in its general purpose to regulate elections and enforce article 103 of the Constitution. This act provides, at section 54:

That the governor, the lieutenant-governor, the secretary of state, and John Lynch, and T. C. Anderson, or a majority of them, shall be the returning-officers for all elections in this State.

There is no other description and no limitation; they are "the returning-officers for all *elections in this State*"; and there is at section 85, the final section of the act, this repealing clause:

That all laws or parts of laws contrary to the provisions of this act, and all laws relating to the same subject-matter, are hereby repealed; and this act shall take effect from and after its passage.

What went down under that repeal? In the first place, upon general principles, all of the revised statutes that was on the title of "Elections" and enforcing this article of the

Constitution, No. 103, and all parts of other laws that were within the purview of the conduct of elections, any election held in that State, and no other parts of such laws, were repealed by that section. You have, then, in the general start of the first section of the act, a provision "that all elections for State, parish, and judicial officers, members of the general assembly, and for members of Congress, shall be held on the first Monday in November; and said elections shall be styled the general elections. They shall be held in the manner and form, and subject to the regulations hereinafter prescribed, and in no other."

Then the provisions go on. Section 35 of this act, which is the number which was in Mr. Justice Bradley's mind, is the equivalent of section 32 in the general election act of 1868, and is identical with section 1 of the electoral act of 1868. It is reproduced here as section 35; so that we have a provision that all general elections so called shall take place on the first Monday of November; that an election for electors shall take place on the first Tuesday after the first Monday in November, according to the provision of the act of Congress; and then, in a section coming after the description of general elections, and after the section that has relation to presidential electors, you have the fifty-fourth section, which provides that the canvassing-board there provided "Shall be the returning-officers," not for all general elections, but "for all elections held in this State," covering by necessary statutory construction the elections that had been mentioned preceding, some of which were called elections of State officers, members of Congress, etc., and called general elections, and one which was called a presidential election.

The election of 1872 was held under that law. Did anybody in the State of Louisiana conceive that the governor was to canvass? Some question was raised about whether the act of 1872, which was passed on the 20th of November,

providing another returning-board, was in operation; but the courts of the State, in the authorities that have been proposed for your honors' consideration by my learned associates, disposed of this question as to who were the returning-board and the canvassing-board, being one and the same thing, on November, 1872, prior to the 20th of November of that year. Therefore the whole operation of this act of 1870, in repeal of this or that portion of the independent acts—the general-election act and the presidential electors' act—was not an act concerning their election, but concerning their discharge of their duties; giving them nothing but the State apparatus, unvaried except in a canvassing-board. Now what the canvassing-board of 1868 for general elections was, I have not stopped to inquire; whether it was the same governor or not, it is not material here. Now comes the act of 1872, which is reproduced.

MR. COMMISSIONER BRADLEY: Right here is a matter which I wish to understand. The digest of the statutes, made immediately after the revision and published in January, 1871, contains these two titles which the revision does, the title "Elections" and the title "Presidential Electors." The digest was made by John Ray, under the direction of the committee of revision; and in that digest, under the head of "Elections," he inserts the act of 1870 instead of the act of 1868, and under the head of "Presidential Electors" inserts the same title that the revision contained, with the exception that the section establishing the returning-board replaces the original canvass. This seems to indicate the opinion of the profession at that time as to the state of the law. What effect it would have, I do not know.

MR. EVARTS: In other words, what we now contend for, that the section which gave a special canvassing-board for presidential electors was repealed by the act of 1870, and the rest of the statute, and which had nothing to do with their election but only with their conduct as electors after they



were elected, was left standing; and Mr. Justice Bradley enables me to refer to a digest of the statutes of Louisiana. In volume 2 of that digest, at page 356, is found the electoral law, and it is attributed under its various sections to the acts on which it is supposed to rest. The first section is attributed to the act of 1870, page 145. This is substantially the same section as is found in the act of 1868. Then the second section is attributed to the act of 1868, page 245; the third the same. The fourth, which is the provision of a returning-board, takes the section that makes the governor, the lieutenant-governor, the secretary of state, John Lynch, and T. C. Anderson, the returning-board, and attributes that to the act of 1870, page 145. And then it goes on, resuming at the fifth section its attribution to the act of 1868, page 245, and in the sixth section is reproduced the provision about electors filling their vacancies. This act is found on page 355 and page 358 of the second volume of this digest, published under the authority of the State in 1870.

MR. COMMISSIONER BAYARD: Does it contain no memorandum of the date when it was passed?

MR. EVARTS: I have stated that these sections which are thus digested are each referred to their appropriate originating statute.

MR. COMMISSIONER BRADLEY: Here is the act under which the digest was made, Mr. Evarts, showing that it had a quasi-authority.

MR. EVARTS: It is very apparent that this is no new construction that we are putting upon the force of the repealing act. It is the published construction, in the authorized publication of the statutes in the form of a digest, followed by the courts, and accepted by the profession. The novelty is in the stress that now here for the first time seeks to produce a collapse of statutory law in order to destroy an election. Did any of those eminent lawyers that attended in New Orleans through the month of November suggest to

Governor Kellogg to canvass these votes for presidential electors? And now the vice, the fault, the irremediable wound of this election is that Governor Kellogg did not canvass them!

The act of 1872 takes up this whole subject and substitutes itself for the act of 1870 and repeals all existing regulations that properly are in the very matter of conduct and regulation of elections in general, and all special provisions found in any other act that are at variance with the imposition of its form, its methods, and its agents on all elections held in the State. But the act of 1870 had already excluded the section of the electoral law that related to canvass, and excluded that alone, and left standing the clause that relates to the conduct of the electoral college, among other things, in filling vacancies.

Now, I have satisfied your honors that not only was it wholly immaterial which of Mr. Carpenter's views you adopted, but it was immaterial that you adopted them both, for the subsequent legislation had left the matter in this shape, that the canvassing-board for all elections had been applied to presidential elections, and the conduct of the electoral college, after it was elected, in its transaction under the laws of the State and of the United States, was left wholly untouched, as it well might be. What change could you have made, what change was needed? That is not the point; but the point is that the legislature had suppressed presidential elections by having no law under which they could be conducted. Well, if there is any State that in the election of 1872 or in anticipation of the election of 1876 has had the attention of all its citizens, all its lawyers, all its judges, all its politicians, all its honest men attracted to it, it is the State of Louisiana; and they all thought that they could elect presidential electors, and one political party was perfectly convinced that it had, and the other political party was perfectly convinced that it had, and the only ques-

tion was which of the two sets produced by this birth was the genuine child.

MR. COMMISSIONER FRELINGHUYSEN: Mr. Evarts, did you refer to the act authorizing the revision?

MR. EVARTS: I beg pardon. That is in the first volume of the digest. It is an act passed on the 16th of March, 1870, the very day this act was passed:

That John Ray be, and is hereby appointed, and authorized to compile a digest of the statutes of the State of general character from the acts passed at the present session of the general assembly, including the act of revision, and to superintend the printing, and that such digests and codes be stereotyped and printed as required, etc.

MR. COMMISSIONER MORTON: Was there a provision requiring that digest to be subsequently submitted to the legislature before it went into force?

MR. EVARTS: I think not.

MR. COMMISSIONER BRADLEY: There was not.

MR. EVARTS: I cannot say without looking at the act, because this is only one section of the act that answers the purpose of advertising the book.

MR. COMMISSIONER BRADLEY: It was submitted to the committee of revision. The act required that, and that was all.

MR. EVARTS: It was to be submitted to the committee of revision, Mr. Justice Bradley suggests, of that session which conducted this whole matter. Here is a little act, which is at page 80 of the session laws of 1870, "An act giving precedence in authority to all the other acts and joint resolutions passed by the general assembly at this session over the acts known as 'the revision of the statutes, and of the civil code and code of practice,' when there exists any conflict in the provisions of said acts and revisions." I think nothing could be made clearer than that.

We have, then, the proposition that our act of 1870 was

passed two days after the revision—enough of itself to amend it. They did not pass an unamendable revision. They passed a revision that when it came into force had all the dilapidation which has been accomplished in its frame by all the legislation of that session of 1870. Such provisions are necessary. Something similar to that was the arrangement in which your recent great work of revision was carried on. This law, then, as to what its text is, is understood: Whatever there is in the election law of Louisiana that governs, gives authority in, prescribes methods of the election of others in that State, applies to the presidential electors' elections, and nothing that reaches the conduct of the electors after their election is different from the act as it stood in 1868.

In the act of 1872, which governed, of course, the election of 1876, there are provisions, mainly of sections 3 and 26, which include the powers, and prescribe the methods of their execution, accorded to this returning-board; and those powers were exercisable according to the law of Louisiana and exercisable in reference to the election of electors just as well as in regard to any other officers of the State; and in regard to their exercise in respect to the election of presidential electors the Government of the United States had no more power and authority than it had in regard to any other election in that State. Why should it? It would have been very easy to have inserted in the Constitution of the United States a provision which, while it fixed in the frame of the government the power of election in the States, had made Congress the judges of the elections, of the returns, and of the certificates of electors. That might have been done; but if it had been done, all that had been done by the convention up to that time would have been annulled, for the independence of the State's transaction would have been subjected to the political authority of the United States, ungoverned by any paramount dominion over it; and our

ancestors that would not let the little finger of Federal influence be inserted into the State election by having a Federal officer voted for by it, is now laying the thickness of a hand on the State election by judging of the election, the qualifications, and the returns.

I ask the eminent lawyers who are to stand by their proposition, if there is one particle of power possessed by the Houses of Congress, or that was ever exercised by them in the experience of this Government, in searching the elections, the returns, and the qualifications of members of Congress, that falls within the whole range of this proposition of proof? Is it not offered to you as the measure and the means and the resort of your inspection of the Louisiana election of electors? Could you do anything more? Where do you get the right to do what you do about members of Congress? You could not get it by mere parliamentary law; and the framers of the Constitution put it in that there might be no doubt about it; for the jurisdiction of Parliament to judge of the qualifications of its members is a resident and remaining part of its authority as the great court of the realm. For, according to the principles of the common law, the execution of a writ is to be determined by the court where it is returnable; and when the Crown issues its writ to the burghesses and shires it is returnable in Parliament, and Parliament judges of the return. But when you are making a complex frame of government and distributing authority between the States and the General Government, you must determine exactly how far the States are to have authority on the subject of this election of members of Congress and how much is to belong to the Federal Government. In other words, while the States are allowed to provide for the election of Congressmen and while the suffrage is measured out by the Constitution to be the same that they accord to the lower house of representatives in the States, yet there is secured to Congress the power of making and altering those



regulations; and this final political power acts, irresponsible for the exercise of its will; will governed by duty, if you please, but will not controlled by any authority of law. And now it is gravely pretended here, not in terms—for the effrontery of the proposition would affright the lawyer that made it—but on the basis of that offer of proof they ask you to ascribe to the two Houses of Congress, when met to count the vote, with the President of the Senate in the chair, precisely the same power in extent, in measure, in uncontrolled execution, that is attributed to the election of members of Congress.

Why did not the wise framers of the Constitution say so if they meant that? And how could they anticipate that the whole spirit and purpose of excluding Federal authority in the choice and the election and the certification of the choice of electors should be perverted into the monstrous claim that an uncontrolled political authority rests in the two Houses of Congress to sift and sift, discard, discount, destroy the election, and make such men as it chooses, or annul the vote of a State when it will answer the purpose, as it will here upon this pretension of authority?

If any further elucidation of my general views is needed, I must respectfully ask attention to the reported arguments of Mr. Matthews and myself in the Florida case.

I now come to consider the very matter of the proof offered. How about these Federal disqualifications? We talked about that subject in the Florida case. It so happened that the proofs which were allowed provisionally did not raise the question there; but our propositions are unchanged. In the absence of congressional regulation furnishing the appropriate, adequate, seasonable means to purge the lists that the governor has certified, on the Federal disqualifications that should discard an elector, the two Houses, met in the presence of the President of the Senate, cannot execute the Constitution; and you can do no more. They

are elected; they are acting; they are certifying, for there is nothing in that idea of the subject at all that a man made ineligible cannot be elected. You might as well say that the forbidden fruit could not be eaten because it was forbidden. I ask attention to an authority of great weight, the supreme court of Pennsylvania, where Gibson, justice, gives the opinion before he was chief justice in 11 Sergeant & Rawle's Reports, page 411. I cannot detail the particular circumstances of the case; but these observations are in point in that case and are important here. It is the case of *Baird vs. The Bank of Washington*:

The bank was governed by thirteen directors, five of whom were competent to the business of ordinary discounts, but nothing less than a majority of the whole number constituted a quorum for transacting any other business. At the meeting of the 11th of August, just spoken of, only seven members, including George Baird, were present, when the vote was taken; so that if he were not a director, either *de facto* or *de jure*, there was at that moment not a quorum present, and hence a question as to the validity of his appointment is thought to be material. As has been just said, to constitute a quorum competent to fill vacancies or transact any other business than that of ordinary discounts required a majority of the whole number of the directors; and this gentleman was elected at a meeting at which only five were present, so that originally his election was unquestionably invalid. And this brings us to the first question, whether he is to be considered as an officer *de facto*, or as an usurper. The judge who tried the cause was of opinion that his election was not merely irregular as to time, place, or notice of it, and therefore voidable, but that it was absolutely void; and that he was an unauthorized agent, who could do no act to bind the bank; in other words, that he was an usurper.

In analogy to the distinction between judicial proceedings that are absolutely void for want of jurisdiction and those that are only voidable for irregularity, there is something extremely plausible in this opinion. Still, however, it will be found that the question does not depend on whether the appointment is void or only voidable, or whether it emanated from an authority which had

full power to make it; but whether the officer has come in under color of right or in open contempt of all right whatever. (*The King vs. Leslie*, Ans. Rep., 163; S. C., 2 Strs., 190.) This distinction runs through all the cases. Where an abbot or parson, inducted erroneously, and having made a grant or obligation, is afterward deprived of his benefice, this shall bind; but the deed of one who usurps before installation or induction, or who enters and occupies in the time of vacation without election or presentation, is void. So, if one occupies as abbot of his own head, without installation or induction, his deed shall not bind the house.

McEnary acted "of his own head"; doubtless a very good head, but "of his own head" and nothing else, and the electors named on the second certificate were hurried to execute on the 6th of December an office into which they had not been inducted, into which they had not been installed, did it "of their own head"; but they might have been prompted. You can put ideas into one's head; nevertheless it is his own head that he acts upon.

In the case at bar, the Court put the matter on the ground that five directors did not constitute a board for any other business than that of ordinary discounts; and that, having no right to go into an election at all, their act could not give color of right. But in *Harris vs. Jays*, Cro. Eliz., 609, it was conceded that the Queen's auditor and surveyor had not the right to appoint the steward for the manor in question; yet it was resolved that a steward appointed by him was an officer *de facto*, and that his acts were good. This is exactly in point. The inquiry then is, was there the color of an election in Mr. Baird's case? He was elected by the very body in which the right to elect was vested, the only thing wanting to the perfect validity of the act being the presence of two or more electors. But the presence of these would not have changed the board to another and a distinct body; it would still have been the president and directors of the Bank of Washington. It is impossible, therefore, to say that Mr. Baird usurped the office without the semblance of right.

Now this clause in the judge's opinion I ask particular attention to:

This principle of colorable election holds not only in regard to the right of electing, but also of being elected. A person indisputably ineligible may be an officer *de facto* by color of election (*Keight vs. The Corporation of Wells*, 12 Wm., 508). So even where the office was not vacant, but there was an existing officer *de jure* at the time.

Perhaps this is the only authority on this subject that I shall need to add to those that were adduced in the argument on the Florida case and that have been presented by my learned associate in this.

Now suppose that Levissee and Brewster were each of them ineligible. They are elected, they are inducted; they are in execution of the office, and the State is not to be stripped in an execution that is satisfactory to itself by extraneous evidence adduced at the moment of counting the votes, that a man was ineligible. Congress must give that consequence by some legislation and some mode of determination, or it cannot arise.

But here these men are in by the election to fill vacancies. Well, the Oregon brief, contrived not only a double but a triple debt to pay, comes up again to prove that when an ineligible person is elected there has been no election, and from that it is argued that when one out of eight fails to be elected, then there has failed to be an election within the sense that a legislature may fill the place; and then, to make all this applicable to the existing state of law in Louisiana, you are asked to believe, you are asked to hold, against all the authorities, that an elector ineligible is not elected, and that if he has not been elected there is not a vacancy in the college; when our State has said, "Our method of filling any vacancy that shall happen for any cause, any defect of full numbers that shall show itself at 4 o'clock for any reason, is that it shall be filled by the State of Louisiana in this way, that those



who have been chosen and attend shall fill the place." this cannot avail. What more do we need to say? We arrive at the same result. Our learned friends, so precise in language, hold that there not being a vacancy, that an office not being vacant, that there being no vacancy in an office, is equivalent to the office not having been filled; that if it has not been filled it is not vacant. That is the proposition: if it has not been filled, it is not vacant.

Now, an office is either vacant or full. There are no terms in law between those two qualifications of being vacant or full. It is not half full; it is not full with an embryo that may grow; it is full or it is vacant. The Constitution of the United States provides that in the case of a vacancy in the representative force of a State in Congress the Governor shall issue writs to fill the vacancy. That phrase is used. In 1837, at a special session of Congress, commencing I think in September, some States had no Representatives elected for that Congress. Congress began usually in December. There was time enough to elect them to send them in season, and have the freshest choice of the people. The governor of Mississippi, not desiring that State to be unrepresented in that important special session, issued his writs for a special election to fill the vacancy. Was there a vacancy or not? Certainly our learned friends would have found out a void vacancy in that case. Nobody had perceived it. Messrs. Gholson and Claiborne were returned, and the question came up on their qualification, on the validity of the election, within the power doubtless of Congress: and the House held that they were duly elected, and gave them seats for the full term. They concluded in Mississippi that they would have another election for the rest of the term, and they sent up other persons chosen in November at the regular election. So in December we had a new choice of Congressmen, and it was concluded I think then that the admission of them for the whole Congress was erroneous.



MR. MATTHEWS: The House rescinded the former resolution, and refused to allow the newly elected members to come in, on the ground that the people had been misled as to the time of the election.

MR. EVARTS: They held them only to be entitled to fill the vacancy, and they did not admit the new people, because they were judges of the whole matter, and concluded that it was better to have another election. What happened then is unimportant; but you can have no better case than that. This is to be found, I think, in the volume of Contested Elections of 1834 to 1865, page 9, and in the fifth volume of the Congressional Globe, pages 80 to 96, and Appendix, page 85.

Now, then, we say in regard to the Federal disqualification, no proof can reach the point, none is offered that touches the point, none would be admissible if it did touch the point, because of the want of legislation or of means of ascertaining it.

I now come to the question of State disqualification. The Constitution of this State of Louisiana has a provision:

No person shall hold or exercise at the same time more than one office of trust or profit except that of justice of the peace or notary public.

Governor Kellogg was governor; Governor Kellogg was elector. Some of these other electors held minor offices, it is said. Proof of this fact is offered in regard to the others in order that State disqualification may now be inquired into and verified in the counting of the vote here. There are sufficient answers to this. Let us look at another clause of this Constitution which provides some other disqualifications:

ART. 99. The following persons shall be prohibited from voting and holding any office: All persons who shall have been convicted of treason, perjury, forgery, bribery, or other crime punishable in the penitentiary, and persons under interdiction; all

persons who are estopped from claiming the right of suffrage by abjuring their allegiance to the United States Government, or by notoriously levying war against it, or adhering to its enemies, giving them aid or comfort, but who have not expatriated themselves nor have been convicted.

So on with a numerous list of disqualifications for holding any office in the State. Suppose an imputation were made against an elector, in the certified forwarded lists by the electoral college and authenticated by the governor, of any of these disqualifications, could you try it? Certainly not. It is a judicial inquiry.

But this office of elector, say Mr. Trumbull and Mr. Carpenter, is not a State office. It is not a State office; he is an elector, a representative elector. When he comes into office he holds the office under the Constitution of the United States, and he acquires the office by the action of the State, the function, the right to vote. He is a representative elector. This clause of the Constitution does not say that no officer under that State shall hold a Federal office. The Courts of that State have settled the question that it not only means State officers, but it means constitutional officers. They have not hampered all future legislation of that State with the inconvenience of never having a man a member of two charitable boards, as one of these electors is charged to have been. They have not hampered the future legislation of that State in the trammels of providing that a citizen shall be made useful in no two occupations, employments, or commissions; but it is constitutional officers that it applies to; and I ask attention to the cases in 5 Louisiana Annual Reports, 155; 6 Louisiana Annual Reports, 175. The case in 25 Louisiana Annual Reports, 138, I think was referred to by Mr. Shellabarger.

MR. COMMISSIONER THURMAN: Do you mean to be understood as admitting that an elector is an officer at all, either Federal or State?

MR. EVARTS: I do not think he is. Certainly he is not a State officer. I do not think he is an officer. I think he is a voter, having qualifications, and his office is of the same kind with the office of a citizen who is an elector, so called in the constitutions of most of the States, but whose qualifications are primary. This is a representative elector and the moment the representative credentials are closed and accorded to him, he is then an elector. In other words, he is not a State officer.

Therefore, there seems to be nothing in that proposition which should produce proof, because proof would be entirely ineffectual, first, for the reason that the inhibition does not prevail; secondly, for the reason, which would apply to the supervisor as well, that there is no provision by any legislation of Congress that can give this action of the two Houses, either in their joint assembly or in this Commission with the rights accorded to it, jurisdiction over the question of fact involved in abuses or violations of the State constitution; and, further, for the reason, insisted on already, that these provisions of the State constitution do not touch the Constitution of the United States, which, while it was careful to exclude Federal intervention of office-holders, was not guilty of the folly of saying that no State should accredit as its elector an honored citizen who filled in the affections of the people and the authority of the State a place of trust. If anything, it was desired that these electors should be State notables, men who had the adhesion of their fellow-citizens; and to say that we must take the residuum of public character and of public interest and of public repute after all the State offices are filled, from constable to governor, from whence we cannot have an elector, is imputing a folly to the framers of our Constitution that they are not open to and which cannot be forced upon them by State legislation.

Governor Ingersoll of Connecticut heads the electoral choice of that State. Every man honors him as a representa-

tive of his State. He is Governor. He certifies to himself. He discharges a governor's duty to certify to whomsoever the people choose. He does not make himself an elector. He certifies upon the recorded evidence, as John Adams declared that he was President of the United States by the count of the votes.

This being so, we come to the primary question of interest to the public, of interest to all citizens, of interest to every man who loves his country, every man who loves its Constitution in its spirit of being popular government, obedient to law; and I am at a loss to see that anything that I have to say on this subject should approve itself to one portion of this Commission and be unpalatable to another by reason of any political adhesions of one side or the other. I shall say nothing that I would not say as a citizen holding the common ground with all of you who are citizens first and partisans afterward.

When I talk of the mischiefs in the State of Louisiana, which are attempted to be curbed and robbed of their rapine by the energetic laws of that State, I do not understand that to any man, because his inclinations or his convictions incline him in favor of the elevation of Governor Tilden, I am to impute that he looks with less horror upon that subjugation of the suffrage, that degradation of citizenship, that confusion of society, that subversion of the Constitution than I do. He only wishes that it should be curbed and redressed by law. And when I speak of the frauds as charged—for I must speak of them as charged at this stage of the business, for they have not been proved at all—when I speak of them as charged, involving falsification, oppression, false counting, forgery, conspiracy, every shade of the *crimen falsi*, am I to be charged in this presence or any other with having more complacency even in the lowest grade of this vice than those who uphold their correction and desire that they shall be frustrated, when I demand that it shall be done by law?

That is my demand. Is it a partisan demand? It is the same demand that is made in respect to the gross afflictions which every citizen feels as beaten by the same stripes that were inflicted on the backs of those poor, unbefriended negroes. That is citizenship; it is not partisanship. And when this other vice is added to violence, together ruling the evil in the world—violence and fraud—when that other form is corrupting and afflicting our citizenship, I feel it as bearing a full share of the common shame, whether it be inflicted by the relentless and shameless tyranny of the New York dynasty or by the alleged frauds of the Louisiana dynasty. But why is it that fraud is so detestable? Why is it that the law searches for it as with candles and condemns it when it is brought into judgment? Because it is but another form of violence—*Fraus aequiparatur vi*. That is the reason why the violence that ravishes is no more heinous than the fraud that secretly purloins the virtue and the fame of American citizenship.

We do not wish to be told that fraud is *worse* than violence. Its vice is that it robs the act of that *consent* on which its freedom depends, to the same effect as violence does. Fraud is compared, as in a simile, to the principal evil, itself described as *violence*. Here all agree that under the great national transactions that closed the war and under the experience of the condition of society in Louisiana thereafter there was exhibited, not indeed a continuation of armed revolt against the Government, but far from the repose that belongs to peace. There were these outbreaks of a bastard and seditious soldiery, the authors of which, by the laws of war, while flagrant, would all be hanged in either camp. What was the scene? Was it revolt? Was it peace? It was that more dangerous condition of the body-politic which, unprobed and uncured, must breed a conflagration both of civil and domestic war. "*Nec tumultus nec quies; quale magni metus et magnae irae silentium est.*"



It is that brooding silence of preparation which is to determine whether outbreak shall assert, or whether fear reduced to despair shall surrender, liberty; and to that state of things the independent action of the State of Louisiana was directed. It was to them a real state of things. It was not a state of things to be smiled at at a distance, whichever side the smile came from. It was the brooding of great fear and great wrong over a whole population, and they undertook to put it into the framework of their Constitution that—The privilege of free suffrage shall be supported by laws regulating elections and prohibiting under adequate penalties all undue influence thereon from power, bribery, tumult, or other improper practice.

In pursuance of that duty, imposed upon the legislature by the same independent right, dealing with an actual situation, the legislature undertook to support the free suffrage, and in their judgment, in the choice they made, who can control them? Shall the proud purity of New York City judge of the means to be used in Louisiana? Shall the saint-protected postures of Senators and Representatives and judges and advocates judge in the silence of this court room of the means? No. There is but one limit to the means; I mean one limit to be imposed outside that State, under that clause of the Constitution, none in the State, except that these means should be adequate, appropriate, and seasonable, and they might be used.

Now, eminent statesmen and lawyers say that, when these methods in this law prescribed are resorted to by a State to save itself from the ruin of civil and domestic war, it prevents the State from being considered republican; and the demonstration and the proof of what was republican government advanced by the learned counsel, Judge Trumbull, was that if a government needed to be supported by arms, it was not republican. Well, was our Government a monarchy, because we had to support it by arms through four years of

civil war? What else did support it? What else prevented the pillars of this court room crushing the judges in their office? What but armed men, servants of the civil power, citizens in arms supporting their Government because they loved it; and they loved it because it was republican. I think that the *quod erat demonstrandum* does not come by that process.

What is the proof offered? what in principle, what in nature? How far is it within the disposition of the offers made in the Florida case? The offer there was to show that, though the governor's certificate was conformed to the recorded canvass of the final State authority, and there was no room for intervening proof between them, yet behind the canvass a resort to simple and record facts would show that the returning-officers acted without jurisdiction. That was the principle of the offer. Will any one say that the act of officers without jurisdiction is a mild and moderate form of defective authority, compared with which fraud was a more evident and more palpable defeat of such action? By no means. When, therefore, you had an offer to produce by proof the county returns in Florida, in order to base on that fact an argument that the action of the canvassing-board on those returns, wherein it assumed to redress or rearrange them, was without jurisdiction, it carried every possible legal and constitutional ground of proof that can be conceived. Let me show that I speak by the card, when I refer to the very accurate statement of his proposed proof by Mr. O'Connor, found on page 44 of the Congressional Record of February 4:

In so doing—

That is, stating what they did in respect to the manipulations of the county returns—

In so doing the said State board acted without jurisdiction, as the circuit and supreme courts of Florida decided. It was by

overruling and setting aside as not warranted by law these rejections that the courts of Florida reached their respective conclusions that Mr. Drew was elected governor, that the Hayes electors were usurpers, and that the Tilden electors were duly chosen. No evidence that in any view could be called extrinsic is believed to be needful in order to establish the conclusions relied upon by the Tilden electors, except duly authenticated copies of the State canvass—

That is, “the erroneous canvass,” as Mr. O’Conor considered it—

And of the returns from the above-named four counties, one wholly and others in part rejected by said State canvassers.

In order to show that their return rested on action behind it that was without jurisdiction. Well, one ground covers all. *Extra vires*, without law, without authority, is as much a condemnation, if the proof will sustain it, as it is possible to suggest.

MR. COMMISSIONER THURMAN: Mr. Evarts, allow me to suggest to you that, if a majority of the Commission thought the Florida statute authorized what was done, then the introduction of proof would have been improper; and therefore it does not follow, because an argument was made that the board exceeded its jurisdiction in throwing out votes, that this Commission so held, for a decision that the true interpretation of the statute would justify what they did made it immaterial to inquire what the motive was.

MR. EVARTS: I can only say that the offer of proof was offered only on that ground, only on the single ground, and the grounds here are of that nature and of the nature of fraud or *mala fides* in the transaction itself, which last I shall consider.

Mr. O’Conor, as was to be expected from his clear relish of legal propositions, understood that that involved in principle going behind the returns at the polls, and he argued that our objections to that were of that somewhat disfavored

complexion of its being inconvenient to go into those proofs. He did not, as I think, correctly appreciate our position; but he did not deny that if he were allowed to adduce that proof, we had a right, on the principles on which he was allowed to introduce it, to go to the bottom of every precinct poll, and he met the difficulty of time and resources for it by saying that the Commission here might temper that jurisdiction by going as far as they found it convenient, and then stopping; that, I suppose, if they found themselves getting beyond their depth they might swim ashore, and leave to drown the candidate that at that stage of the water found it over his head. But here our friend, Mr. Carpenter, proposes another solution, that the fact that they have not time to do the thing is not a reason for concluding that perhaps it is not one of the duties assigned to you, but simply affords a reason for peremptory adjournment; that the thing had better be undone than done; and there is no choice but one way or the other; for, if anything, these proffers go into the whole untraversed sea of action, jurisdiction based on the action of subordinate officers in the conduct of the election on days, on forms, on the facts that must appear, and the proofs that must show the facts to give jurisdiction, and you are turned into a supervising court that takes up the transactions of a special jurisdiction by *certiorari* to search it, and see whether the jurisdictional facts existed; whether they existed in throwing out this poll, that poll, the other poll; and whether, when it is rectified, the object being to produce only then a *prima facie* officer, you have been discharging the duty that the Constitution imposed upon you, or whether it rested on the governor and the canvassing-board to determine.

Well, now, the fraud, in the sense of *mala fides*, of returning-officers or canvassing-boards is extraneous fact, is fact that does not vitiate as much as being *ultra vires* does or can. It is more opprobrious in epithet; it is more damnable in its morality; but in its legality it is a step lower than *ultra vires*.

Now let us look at once and briefly at the very proposition as to the right to trouble the State's elections, whether they have been honest, whether they have been wise, whether they have been careful, whether they have been prosperous. Supposing that the Constitution had given the casting of the electoral votes of a State to the governor of that State; he should be the representative elector; he should throw the votes that were distributed to the population of that State; what right would you have had to inquire beyond the single point who is governor, who is governor *de facto*, who is the governor governing the State at the time that he enters upon that transaction? Could you inquire whether he had been fraudulently elected, whether in his election the liberties of the people had been suppressed, whether he was in by a fraudulent conspiracy by which he bought his office, whether he had taken part in the plots that had subverted the suffrage and falsified the action of the people? You could not. It is enough for you that the governor who governs is the man who is to represent the electoral votes of that State. What other right have you in regard to *electors* in inquiring into the facts by which the State has transacted the business of bringing into existence electors *de facto*? I submit, on principle none whatever. And on this question of fraud or *mala fides* or oppression, upon what possible principle can you enter into that inquiry? Who does not see that if you give the great power of the Federal Union a judgment in the matter of how the State has performed its duty you give the judgment that the wolf had over the conduct of the lamb, and can trace the vice in that conduct to any remoteness of relation that you choose?

I apprehend that nothing is sounder and safer than this, that we are to redress these mischiefs by law and the Constitution, although fraud may make us recoil from its touch, and although violence may make us shudder at its degradation of the American name. I have heard that fraud vitiates



everything, and it is spoken of here as if it did it of its own force; that every *factum* in which an ingredient of fraud entered thereby became *infectum*, and so the bane always bred its antidote. Fraud would not be so dangerous an element if that were so. I have heard that the liberties of the people are to be paramount in every particular juncture, and that laws, and constitutions, and courts, and the permanence of the system of justice, and the truth that will endure, are all to be thrown aside upon the mere intrusion of this afflictive element of fraud, and that this course alone will secure their liberties to the United States and their people. We have a maxim of the law, and of social ethics and philosophy, that goes behind all this: *Misera est servitus, ubi jus vagum aut incertum*. There is no condition of a people so abject as where the law does not rest upon firm foundation, and its lines are not certainly drawn.

In the pressure of particular considerations that affect the sympathies and the conscience, this is always the appeal. What, it is said, is a constitution compared with human interests and human liberty? Nothing, to be sure, except that *all* our social interests, and *all* our liberties rest on law and the Constitution. These are not the deity, but they are the shrine, without whose shelter no human worshipper can detain the goddess from the skies.

Now, for these poor people of Louisiana, if the Federal power now undertakes to thwart, to uproot this scheme of energetic law to preserve society there from destruction, and leaves these unbefriended, uneducated, simple black people to the fate from which the State strove hard to save them—I say that you will have made them, by that action, the *victims* of your Constitution, for your Constitution gave them suffrage, and they are to be slaughtered for having the gift found in their hands. I say that you make them the sacrifices to the triumph of the Government over the rebellion. I say that such self-abasement of the powers of this Government is

beyond all cure. It teaches the sad lesson that the American people, in the attempt to make good the largeness of its promise and to work out the glory of its proud manifesto of freedom and equality before the law, finds itself thwarted by the exhibition of violence in this turbulent population, and forced, with its own hand, to crush the methods of law by which the State has sought, alas! how vainly, to curb and redress this menace and this mischief to its honor and its peace.

## THE OREGON CASE

### NOTE

The question in dispute in the Oregon case differed materially from the main contest in the preceding cases of Florida and Louisiana, in that it did not involve in the least any consideration of the conduct of the election itself in that State. There was no question of the fairness of the election; there was no imputation of fraud or intimidation in the election or in the proceedings and conduct of the returning-board. The decision of the Commission, as to which of the two certificates from Oregon was to be counted, hinged upon the question of the eligibility of one of the Republican electors, and involved the deliberate failure of the governor of the state, in the performance of his duty, in the matter of certification under the law of Oregon and the law of Congress. Admittedly, the three persons named as Republican electors received a clear majority of the votes cast at the election. On the ground, however, that one of these persons was at the time of the election ineligible to hold the office of elector, by reason of his being a postmaster, the governor issued certificates to the other two Republican electors and to one, Cronin, a Democrat, who had not received a majority of votes and had not been elected. The governor of the State was a Democrat and was clearly influenced in his actions by wholly partisan motives to secure at least one electoral vote from Oregon for the Democrats.

The proceedings which resulted in two certificates from Oregon were briefly as follows: The certificates issued by the governor were all delivered to Cronin the Democratic candidate for elector. He refused to deliver to the two Republican electors the certificates that had been issued to them. The two Republican electors, Cartwright and Odell by name, thereupon met at the time appointed by the statute to perform their duties as electors. Watts, the other Republican elector presented his resignation as an elector on the ground that at the time of the election he was ineligible. His disability had subsequently been removed through his surrender and resignation of the office of postmaster. His resigna-

tion as elector was accepted and, to fill the vacancy thus made in the electoral college, the other two electors, pursuant to the laws of Oregon, chose Watts as the third elector. The three electors then proceeded in the function of their office as electors and cast their votes for the Republican candidates, Hayes and Wheeler.

While this was going on, Cronin undertook to establish another college of electors, by declaring two vacancies in the college, through the refusal of Cartwright and Odell to act with him. These vacancies in this fictitious electoral college were filled by the choice of two Democrats, Messrs. Miller and Parker. These three then proceeded to cast their votes, two of them voting for Hayes and Wheeler and one for Tilden and Hendricks.

In default of the governor's certificate, which had been withheld, the Republican electors attached to the certificate of their vote their affidavit of the facts and a certified copy of the official returns of the election then on file in the office of the secretary of state of the State of Oregon, showing the election of the three persons named as electors, and they also attached to this certificate the minutes of the proceedings of the electoral college.

The governor's certificate, that accompanied the certificate of those claiming to be the electors under the leadership of Cronin, was not in accord with the law of Oregon that required the governor to give certificates to those receiving the highest number of votes. Under this law the governor's plain duty was to give his certificate to the three persons voted for as Republican electors. The governor, in his effort to evade the requirement of the statute, stated in his certificate the number of votes received by Odell, Cartwright and Cronin with the additional statement, "being the highest number of votes cast at said election for persons *eligible* under the Constitution of the United States, to be appointed electors of President and Vice-President of the United States."

This was in brief the situation presented by the papers before the Commission. After argument by Mr. George Hoadly in opening the case for the Democrats and by Mr. Stanley Matthews on behalf of the Republicans, the Commission proceeded to take testimony on the question of Mr. Watts's incumbency of the office of postmaster and of his resignation therefrom. Mr. Evarts then concluded the argument in behalf of the Republicans in the argu-

ment that follows. Mr. Merrick on behalf of the Democrats followed Mr. Evarts in the final argument in the case.

### ARGUMENT

MR. EVARTS: Mr. President and Gentlemen of the Commission, In assigning at the outset of this discussion the dividing line between the authority of the Government of the United States, by any legislation that it might think adequate and desirable, or in execution of the constitutional power of counting the votes without any legislation on the subject, and the authority of the respective States—the line that divided what belonged to the State and what might be the subject of inquiry to the Federal Government, observing constitutional limits on the one side and the other—the counsel for the objectors with whom I am associated laid down the proposition that the ultimate fact under the laws of the State in completion of the election by the certification of boards or officers charged with the completion of the final canvass was a point beyond which, in looking into the transactions of the State, the Federal Government could not go. We laid down at the same time the further proposition that this conclusion of the State's action was the principal fact that under the legislation of Congress was made the subject of *any* lawful certification, and that as that principal fact could not be overreached by any previous inquiry into the transaction of the State, so that principal fact could not be disparaged or falsified by any congressional authority exercised in certification of that fact.

The proposition as we then laid it down for Florida, we adhered to in the case of Louisiana; and the proposition as thus laid down we adhere to in the case of Oregon. We find in Oregon, as in Florida or Louisiana, that by its laws there is some final ministerial canvass, which, completed, shows what the election was; and we need only to look into the laws of this State, as of the other States, to see whether the appar-



ent canvassing-board was one that had such authority under the laws of the State.

We have also asserted and adhered to but one proposition as to the powers and duties of this Commission. From the first and until now we have discarded any notion that you were a court or could exercise the powers of a court in inquiring into the actual facts of an election in the States. Not so, however, with the learned counsel who from time to time in the different stages of this matter have appeared as our opponents. The whole proposition as to Florida, on their part, was based upon the idea that you were a court, with the powers in *quo warranto* of a court, and were controlled in the exercise of those powers by no other consideration than seemed to you just in their exercise and as any other court would be governed in such exercise. The logic of that argument was accepted that if you had not that penetrating and purging power of a court, looking for and producing the very right of the matter as the election itself should disclose it, then our proposition that the evidence upon which we rested as the result of the State's action in producing electors in Florida was the "be-all and the end-all," unless some subsequent movement in that State might have displaced it.

When, then, we came to Louisiana—which differed not at all from Florida in the principles of law applicable to it on this point of the State's authority and the point of inquiry which repelled any further inquisition on your part—the principles then avowed were that the idea of your being a court with powers in *quo warranto* was wholly inadmissible, wholly inadmissible in the nature of the transaction, wholly inadmissible from the impassable barriers interposed by the Constitution. Indeed, these propositions which we had laid down in the Florida case, the support of these propositions in reason and authority, were all adopted and enforced as the doctrine of our opponents in the Louisiana case.

Now when we come to this case, even with more force and

earnestness and with a greater reach and exhaustion of argument and authority, every proposition that either in the Florida or in the Louisiana case we contended for, upon this point, is avowed, is defended, is insisted upon by our opponents. Nor will it do for our learned friends to put their acceptance of these propositions upon the mere concession that this Commission has so decided and that further debate is inappropriate and unwarrantable. They have themselves in a prolonged discussion maintained, as matter of law and upon authority, not only the position that we took as to the action of a State bringing an elector into the execution of his power as an elector, but, as I understand the accomplished and experienced lawyer who yesterday presented the argument of our opponents, such a person is, until *quo warranto*, until *certiorari*, until some form of judicial contestation disturbs his position, not only a *de facto* but also a *de jure* representative of the office.

Never having had a doubt that before many weeks had passed, the general judgment of the profession of this country would sustain these positions that we espoused, and that have been sanctioned by this Commission, I must yet confess that I did not expect so signal and immediate a confirmation of that expectation as the present and explicit avowal, espousal, and maintenance of these positions by our learned opponents, and I welcome this as a great and valuable aid in furnishing an answer to the irresponsible and rash comments that have been made in various relations, and especially in the public press, upon these controverted points of law, which have formed the material of the forensic discussions before this Commission and of its decisions.

I understand that in securing that unanimity of the profession so desirable in a community accustomed to look upon the *law* as the principal safeguard of the welfare of the state, this adherence of our opponents will go far to check any rising disposition to further public contest on the subject.

You have decided questions of constitutional law; you have decided them in the presence of great agitations of the people, and you have decided them in a way that will establish them firm and sure principles in the future, when agitations shall take other complexions and be pushed in the interest of other parties. By what you have done, by what you shall do, the principles of the Constitution and the maintenance of the laws of this country in the great transaction of a presidential election are made certain, intelligible, rational, and sound.

Now in Oregon it is very plain that an election was held and through all its stages was conducted with an entire observance of the requirements of law, with an entire acceptance on the part of the whole population of the election and its result, up to the last stage of it, with every step unquestioned in its integrity, its justice, and its conformity to law. The result reached by the authentic canvass of the votes, by the proper authority, and in the proper presence, showed on each side the vote for electors, according to law, being upon general ticket, that three on the one side ran even with each other, three on the other side even with each other, except by the casual and unimportant disparity of a few votes as between the several candidates on the same ticket. All that has disturbed this result has occurred after the completion of the election and its certification as completed by the proper authority, after the final canvass and its certification by the officer of state charged with the duty of canvassing and certifying. That canvass remains of record now in the secretary of state's office, undisturbed, undisputed, unquestioned. That is the fact upon which the title of the electors for President and Vice-President for the State of Oregon rests. Thereafter there remains nothing to be done on the part of any official of that State, under the terms of the Constitution of the United States nothing whatever, and under the law of Congress there remains but one act to be performed,

to wit, the provision by the executive of the State and the delivery, to the electoral college that was elected, of triple certificates to accompany as a formal authentication the action of the electoral college. All that our learned friends urge as arguments upon what they consider an improvident, an unsound, and dangerous doctrine on our part, but urged only in anticipation of hearing our views, is that this result of the canvass of an election made matter of record according to the laws of a State might be falsified, might be perverted, might be destroyed by the process of certification, if we should hold that the form was greater than the substance. All these hypothetical suggestions are now brought in play as actual transactions occurring in the State of Oregon; and now the pretension that certification is paramount to the thing certified, not amendable by the thing certified, not amendable by the record which is the thing to be certified—all those propositions proceed from our opponents as their champions. They have not changed places with us, for we never occupied any such position. They have, however, assumed the propositions, from time to time, which were necessary and suitable for the particular occasions on which they used them. It has been convenient, as it seems to us, for this representation of diverse sentiments and opinions at different times, that they have not been presented by the same counsel. We have a change in the advocates attending a change in the propositions.

First, let us understand what is presented, in the shape of evidence, that bears upon the construction of what is contained in the *certificates* which are plenary evidence before you, they having been opened and transmitted by the President of the Senate. It is that Mr. Watts, holding a small post-office of the fourth class in the State of Oregon, appointed years before, was discharging the duties of that office on the 7th of November; that on the 14th of November he resigned his office, and his resignation was accepted; that

thereafter the Department accepted the charge of the office and conducted it from that time forward, and that, as matter of fact, the office itself was changed from the place of business of Watts, the postmaster who resigned, to the place of business of the officer designated to take his place, Mr. Hill, having a drugstore, and then becoming immediately assistant postmaster under the special agent, and in due course of time receiving a commission as postmaster in full. Then Mr. Watts, whenever you come to consider, if you do, the question of whether he could be appointed an elector on the 6th of December, on his refusal to act upon his prior appointment, is unmistakably placed before you in the position of a postmaster who had resigned, and who had received from the Post-Office Department the acceptance of the trust that he had laid aside, which thenceforth was conducted by the Department itself under its agents.

I do not think that I need now to re-argue in the least either the question of ineligibility as justifying proof, or the question of whether an ineligible candidate is vested with an office until by some determination he is excluded from it. Whatever we said that received the assent of this Commission in the former arguments needs not to be repeated. Whatever was said that did not receive the assent of this Commission will be of no service in that regard if it be repeated. I shall, therefore, proceed with the inquiry into the validity of the vote of the three electors in the first certificate, as it rests upon the evidence in your possession proceeding from the State, delivered into the hands of the President of the Senate, and opened before the two Houses of Congress, and now deposited with you as evidence for you to regard.

What, then, does this certificate No. 1 contain? I ask your attention to the parts of it that I shall now designate. I ask attention to the certificate of the electors, commencing at the foot of page 3 of the printed paper. It is their certificate of the votes that they cast.



UNITED STATES OF AMERICA,

*State of Oregon, County of Marion, ss.:*

We, W. H. Odell, J. C. Cartwright, and J. W. Watts, electors of President and Vice-President of the United States for the State of Oregon, duly elected and appointed in the year A. D. 1876, pursuant to the laws of the United States, and in the manner directed by the laws of the State of Oregon, do hereby certify that at a meeting held by us at Salem, the seat of government in and for the State of Oregon, on Wednesday, the 6th day of December, A. D. 1876, for the purpose of casting our votes for President and Vice-President of the United States—

A vote was duly taken, by ballot, for President of the United States, in distinct ballots for President only, with the following result: The whole number of votes cast for President of the United States was three (3) votes.

That the only person voted for for President of the United States was Rutherford B. Hayes, of Ohio.

That for President of the United States Rutherford B. Hayes, of Ohio, received three (3) votes.

In testimony whereof we have hereunto set our hands on the first Wednesday of December, in the year of our Lord one thousand eight hundred and seventy-six.

W. H. ODELL.

J. C. CARTWRIGHT.

J. W. WATTS.

That is all that the Constitution of the United States requires. The twelfth article of the amendment is:

The electors shall meet in their respective States and vote by ballot for President and Vice-President; . . . they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

That, then, is a discharge of the entire constitutional duty, and with the full certification of its discharge that the Constitution requires. What duty has been added by the act of Congress to be performed by the college of electors in this behalf? In the one hundred and thirty-eighth section of your revision this is their duty:

The electors shall make and sign three certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President and the other of the votes for Vice-President, and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State.

This paper contains no such list, we will suppose; but is it a failure of duty on the part of the electors? Is there even a presumption that they have received such paper, and have omitted to include it in their return? By no means. If any default, any imperfection in the duty of those electors is to be charged, it must be based on the fact that the executive furnished that college with the list as the act of Congress required the executive to do, and that they have omitted it; and we find as a part of the minutes of this electoral college a statement as to this matter of fact, whether that college was ever furnished with any of the lists that the executive of the State was trusted by the act of Congress to furnish. They make out a sworn statement before a proper magistrate, whose authority to administer the oath is certified by the secretary of state as a proper officer for that purpose:

UNITED STATES OF AMERICA,

*State of Oregon, County of Multnomah, ss.:*

We, J. C. Cartwright, W. H. Odell, and J. W. Watts, being each duly and severally sworn, say that at the hour of twelve o'clock m. of the (6th) sixth day of December A. D. 1876, we duly assembled at the State capitol, in a room in the capitol building at Salem, Oregon, which was assigned to us by the secretary of state of the

State of Oregon. That we duly, on said day and hour, demanded of the governor of the State of Oregon and of the Secretary of state of the State of Oregon certified lists of the electors for President and Vice-President of the United States for the State of Oregon, as provided by the laws of the United States and of the State of Oregon; but both L. F. Grover, governor of the State of Oregon, and S. F. Chadwick, secretary of state of said State, then and there refused to deliver to us, or either of us, any such certified lists or any certificate of election whatever. And being informed that such lists had been delivered to one E. A. Cronin by said secretary of state, we each and all demanded such certified lists of said E. A. Cronin, but he then and there refused to deliver or to exhibit such certified lists to us, or either of us. Whereupon we have procured from the secretary of state certified copies of the abstract of the vote of the State of Oregon for electors of President and Vice-President at the presidential election held in said State November 7, A. D. 1876, and have attached them to the certified list of the persons voted for by us and of the votes cast by us for President and Vice-President of the United States in lieu of a more formal certificate.

W. H. ODELL.

J. W. WATTS.

JOHN C. CARTWRIGHT.

Sworn and subscribed to before me this 6th day of December,  
A. D. 1876.

(SEAL.)

THOS. H. CANN.

*Notary Public for State of Oregon.*

What becomes now of the proposition of a State being defrauded of its vote in the electoral college when its electors, appointed according to the will of the people of the State, have assembled, discharged their constitutional duty, and are deprived by the executive of the State of the certified lists which it becomes a part of their duty, if they receive them from him, and only in such case, to append in verification? Which is it that is to stand, the electors made by the Constitution of the United States sufficient certifiers

of their own action, made by the act of Congress only subject to the single duty besides of inclosing the lists that the governor may have given them? Here you have the electors meeting, voting, certifying, and transmitting, and showing that the absence of the governor's list arises from the governor's default and not their own, and that they have supplied the fact on which the governor's list must rest if it be lawful, the fact of the final canvass of the election, produced before you now here just as if you inspected it yourself in the office of the secretary of state.

Now my friends are in the face of the proposition whether a fraudulent, or a perverse, or an ignorant governor can subtract or withhold the paper, and the electoral college be destroyed and the presidential vote be lost. If we were to proceed no further, I should ask, the governor's certificate withheld, was there any excuse for that, is there any pretense that it was delivered? Not the slightest. Nobody pretends that the governor of Oregon ever furnished those lists to the electoral college; nobody pretends that any messenger or intermediary of his ever delivered those lists to the electoral college. What is the language of the act of Congress in that behalf?

It shall be the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified, and to be delivered to the electors on or before the day on which they are required by the preceding section to meet.

Is it to the college, to the body, or is it not? It is to the college or body. Did the governor ever deliver them to this college or to this body that was met? Did Mr. Cronin ever deliver them as the agent of the governor to this college or body that was met? Its title to them was complete. The duty and obligation of the governor in this behalf were complete when the college was assembled at the capitol. No matter who composed it, whether Watts was a member or

Cronin was a member, the papers were then to be delivered to the college, and their subtraction, their withholding, needs no description of fraud or contrivance. It was an absolute desertion of duty, and such desertions of duty are never gratuitous. They always have an object, and the result that followed is the object designed.

How is the act of Oregon in this behalf?

The secretary of state shall prepare two lists of the names of the electors elected and affix the seal of the State to the same. Such lists shall be signed by the governor and secretary, and by the latter delivered to the college of electors at the hour of their meeting on such first Wednesday of December.

Was that done? If you employ an agent or messenger, instead of delivering with due formality and openly, as I venture to say has been done in every State in this Union, has been done in Oregon until this election, then you are responsible to see that the messenger or agent makes the delivery. I then say that this certification and action of this college are all that the Constitution and the laws of the United States require, and that on the face of this certificate, the college making its representations, and the knowledge of this college in respect to its majority of attending members being open to any inquiry, you are at once face to face with the proposition whether a subtraction, a suppression by the executive of the State of one of these lists, entitles both Houses of Congress to throw out the vote of the State.

But this certificate contains a great deal more. The occasion for its containing so much more is undoubtedly because of this violation of duty on the part of the executive of the State, but what does it contain? It contains an abstract of votes cast at the presidential election as on file in the secretary of state's office. It is the very canvass itself of every county for every candidate and in every figure that becomes the subject of tabulation.



SALEM, STATE OF OREGON:

I hereby certify that the foregoing tabulated statement is the result of the vote cast for presidential electors at a general election held in and for the State of Oregon on the 7th day of November A. D. 1876, as opened and canvassed in the presence of his excellency L. F. Grover, governor of said State, according to the law, on the 4th day of December, A. D. 1876, at two o'clock p. m. of that day, by the secretary of state.

S. F. CHADWICK,  
*Secretary of State of Oregon.*

Besides this, there is this certificate, the importance of which will appear from the citation of some of the statutes of Oregon which I shall mention:

UNITED STATES OF AMERICA,  
STATE OF OREGON, SECRETARY'S OFFICE,  
*Salem, December 6, 1876.*

I, S. F. Chadwick, secretary of the State of Oregon, do hereby certify that I am the custodian of the great seal of the State of Oregon; that the foregoing copy of the abstract of votes cast at the presidential election held in the State of Oregon November 7, 1876, for presidential electors, has been by me compared with the original abstract of votes cast for presidential electors aforesaid, on file in this office, and said copy is a correct transcript therefrom and of the whole of the said original abstract of votes cast for presidential electors.

That is that transaction which, observed and attended to by the governor in a certificate, would give to his certificate the support in law if he had discharged the duty in fact.

In witness whereof I have hereto set my hand and affixed the great seal of the State of Oregon the day and year above written.

S. F. CHADWICK,  
*Secretary of the State of Oregon.*

Besides that there is this:

*List of Votes Cast at an Election for Electors of President and Vice-President of the United States in the State of Oregon Held on the 7th Day of November, 1876.*

For Presidential Electors.

W. H. Odell received fifteen thousand two hundred and six (15,206) votes.

J. W. Watts received fifteen thousand two hundred and six (15,206) votes.

J. C. Cartwright received fifteen thousand two hundred and fourteen (15,214) votes.

E. A. Cronin received fourteen thousand one hundred and fifty-seven (14,157) votes.

H. Klippel received fourteen thousand one hundred and thirty-six (14,136) votes.

W. B. Laswell received fourteen thousand one hundred and forty-nine (14,149) votes.

Daniel Clark received five hundred and nine (509) votes.

F. Sutherland received five hundred and ten (510) votes.

Bart Curl received five hundred and seven (507) votes.

S. W. McDowell received three (3), Gray, one (1), Simpson one (1), and Salisbury one (1) vote.

I, S. F. Chadwick, secretary of state in and for the State of Oregon, do hereby certify that the within and foregoing is a full, true, and correct statement of the entire vote cast for each and all persons for the office of electors of President and Vice-President of the United States for the State of Oregon at the general election held in said State on the 7th day of November, A. D. 1876, as appears by the returns of said election now on file in my office.

S. F. CHADWICK,

*Secretary of State of Oregon.*

[SEAL.]

There is the list by the executive authority of the state of Oregon so far as it was lodged in the office and committed to the secretary of state, so far as the great seal of the State affixed by the executive officer of the State having its cus-

today could make a certification by a State. Who else is there in Oregon that can certify a list? Who has the list? Who has the seal? Who has the office both of record and of certification? The secretary of State. Supposing, then, that to be so for a moment, where do you find any defect in that of being an adequate compliance with the act of Congress and the act of Oregon that gives you a list of the persons appointed? You have nothing to do but to read the laws of Oregon and see that electors are to be appointed by election, and that in every election held in that State the persons that have the highest number of votes shall be declared elected—that is in the Constitution; and in the election laws “that the persons having the highest number of votes shall be deemed elected,” and then you discard all the rest as surplusage and unnecessary verification of the thing certified. What does it want under the act of Oregon? The act of Oregon requires a list to be given by the secretary of state under the great seal of the State, and only requires that the governor shall sign it. The governor, in pursuance of the great breach of trust and duty which he had meditated and was performing, refused his name to that certification. Does that cease to be a certification that the Congress of the United States will accept as an adequate observance of the directory duty that the executive authority of a State shall furnish lists of the persons appointed? I think not. We shall see by very brief references that under the laws of Oregon this paper now here before you is to you as matter of evidence precisely the same as if you had before you the original paper in the office of the secretary of state.

I ask attention to the laws of Oregon, not printed in the little syllabus, that relate to the subject of evidence of public writings, at pages 253, 256, and 257 of the Oregon code. The Constitutional provision is given in this pamphlet, page 137:

There shall be a seal of State, kept by the secretary of state for official purposes, which shall be called “the seal of the State of

Oregon." The secretary of state shall keep a fair record of the official acts of the legislative assembly and executive department of the State.

The secretary of state, by the law of Oregon, is keeper of the action of the executive department of the State—and shall, when required, lay the same and all matters relative thereto before either branch of the legislative assembly.

The seven hundred and seventh section of the Oregon revision provides:

Every citizen of this State has a right to inspect any public writing of this State, except where otherwise expressed and provided by this code or some other statute. Every public officer having the custody of a public writing which the citizen has a right to inspect, is bound to give him on demand a certified copy of it on payment of the legal fees therefor, and such copy is primary evidence of the original writing.

The documents that are embraced within this duty of the secretary of State are named, so far as pertinent to this inquiry, on page 256, and within this certificate, as provided in section 738:

Whenever a copy of a writing is certified to be used as evidence, the certificate shall state that the copy has been compared by the certifying-officer with the original, and that it is a correct transcript therefrom, and of the whole of such original or of a specified part thereof. The official seal, if there be any, of the certifying-officer shall also be affixed to such certificate, etc.

Looking at this certificate, then, with the act of Congress before you in reference to certified lists that are to be used and employed, can you have any doubt that this contains all that is necessary to make action, the *bona fide* action, the complete lawful action, of the electors and of the State that had chosen them electors—the disparagement of the authentication under the act of Congress by the governor's withholding of his certificate, if unexplained, not affecting

the certification by the electors, who have done their duty under the act of Congress or under the act of Oregon?

We, have, besides, the minutes of the college. Now are the electors a body? They are so described in the Statutes of the United States; they are so described in the statutes of Oregon. They are necessarily a college under the power confided in them to fill vacancies, which both by the act of Congress and by the statutes of their respective States is confided to them.

MR. COMMISSIONER BRADLEY: Mr. Evarts, who made this list?

MR. EVARTS: The original as now on file?

MR. COMMISSIONER BRADLEY: Yes.

MR. EVARTS: The secretary of state, as the canvassing-officer, in the presence of the governor, as I understand.

MR. COMMISSIONER ABBOT: Permit me to ask if there is any law that you have discovered, Mr. Evarts, which permits the secretary of state to certify to a result drawn from certain figures before him, certain returns? Is it not simply that he can certify to any paper for what it is worth?

MR. EVARTS: By reason of this general power?

MR. COMMISSIONER ABBOT: Yes, sir.

MR. EVARTS: He has given a certificate of the full paper; that is the canvass. All the rest is a transaction lower down in the election. These are all the counties of the State, all the votes returned, all the candidates voted for, the distribution and the tabulation, and was done by him in the presence of the governor.

MR. COMMISSIONER ABBOTT: I will call your attention to the certification on the second page:

I hereby certify that the foregoing tabulated statement is the result of the vote cast for presidential electors, etc.

MR. EVARTS: Yes.

As opened and canvassed in the presence of his excellency L. F. Grover, governor of said State.



That is canvassing; producing the tabulated vote from the votes forwarded from the precincts and counties in the canvass.

MR. COMMISSIONER BRADLEY: The next says "copy of abstract."

MR. EVARTS: Yes.

MR. COMMISSIONER BRADLEY: "Compared with the original abstract of votes cast for presidential electors aforesaid on file in this office."

MR. EVARTS: Yes; and the whole of it. Will any one tell me what else there was to canvass? What more can anybody do than take the returns? They cannot alter them; they are all to be opened, all to be canvassed, and the result produced. Whether you call it a result, provided it be a paper, formal, complete, recorded, or whether you call it an abstract of the votes according to law, it is the transaction that the law confides to the officer, and it is its execution as he files it after he has performed the duty. You will see by the election laws that section 37 provides:

The county clerk, immediately after making the abstract of the votes given in his county—

The same word is used; that is his return; that is his canvass. The abstract is the canvass set down as the result—

Shall make a copy of each of said abstracts, and transmit it by mail to the secretary of state at the seat of government; and it shall be the duty of the secretary of state, in the presence of the governor, to proceed within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for secretary and treasurer of state, state printer, justices of the supreme court, member of Congress, and district attorneys; and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person.

Then for the officers designated in regard to the election of President:

The votes for the electors shall be given, received, returned, and canvassed as the same are given, returned, and canvassed for members of Congress. The secretary of State shall prepare two lists, etc.

There being no provision for a governor's commission or anything of that kind; but I will not repeat the argument of my learned associate, so effectually, as it seems to me, made, in regard to this operation. What I have to say to your honors is this, that you have included by authentication satisfactory to the laws of Oregon of the very canvass itself as it now appears of record in the department of state. There is no other canvass. The blotter or the slate in which there may have been a tentative addition of numbers is not the transaction of record. This is the very thing. It never existed as a canvass till it stood in that shape, and standing in that shape, it could acquire nothing additional, tolerate nothing additional. In the minutes this board proceeds with its own transactions. The hour having arrived,

The meeting was duly organized by electing W. H. Odell chairman and J. C. Cartwright secretary.

The resignation of J. W. Watts, who was, on November 7, A. D. 1876, duly elected an elector of President and Vice-President of the United States for the State of Oregon, was presented by W. H. Odell, and, after being duly read, was unanimously accepted.

You have his resignation. It was a transaction in perfect good faith. It was in open day. It was matter of record in this college. It rested upon an uncertain opinion as to whether his having been postmaster destroyed his eligibility, whether it would destroy his vote; he refuses to act under that appointment for fear of that public injury to the State of Oregon. He did his duty in the college of electors. If Cronin was a member of the college and Cronin had attended

and Cronin had part in the transactions, whatever was done by Watts was done openly and would be seen and known by Cronin as well as the others, and if there remained further controversy, further action of the college to determine who were the three, that would have been taken, that would have been recorded in the minutes; but of the principal fact that Watts refused to act under his original appointment on the scruple that his State might thereby lose a vote that it was entitled to, the college proceed (the disability having been removed in their construction, and in yours, as I submit) to recognize the will of the people of Oregon in their selection of the person of Mr. Watts, a man known and trusted by that people, and gave him a title which, trusting to, the State of Oregon would not put in peril one of its votes.

Then the voting proceeds, and the ballots are here. The very ballots themselves, the originals that were deposited are here, each of them bearing the indorsement of the elector who deposited it. Therefore, you have the election here, and now I should like to know whether under the Constitution of the United States, under the statute of 1792, under the law of Oregon about presidential elections, these minutes are not plenary proof of the action of that college, if that was a college. Did anybody ever pretend that the certificate named by the act of Congress was any part of the warrant of the electors to act in the college? No. It is to be delivered to the electors acting in the college in order that they may use it as part of their transaction. Who can contradict this? Who can be heard to contradict it? You have then this absolute proof. When this college convened and undertook to act, there were present the two men that without any impeachment had a perfect title to the office. There was present a third man, and there was nobody else present and then the transaction went on.

I apprehend, therefore, that unless you hold that the want of the governor's certificate, its subtraction by the viola-

tion of the governor's duty, is sufficient to suppress the electoral college and the vote of the State, you have here everything that you need under the act of Congress, under the Constitution of the United States, without looking at the certificates which they put in in support of their title, out of abundant caution, in the abundant performance of duty, in order that it may be seen that the absence of any formality is not to be imputed to them from the absence of the principal fact on which and from which the formality derives its sole claim to existence.

We have another certificate, and this contains nothing that contradicts the other, nothing that by itself can stand on its own inspection as an adequate transaction. In the first place, what is the certificate of the governor? Does this comply with the act of Congress?

I, L. F. Grover, governor of the State of Oregon, do hereby certify that at a general election held in said State on the 7th day of November, A. D. 1876, William H. Odell received 15,206 votes, John C. Cartwright received 15,214 votes, E. A. Cronin received 14,157 votes, for electors of President and Vice-President of the United States; (the syntax arrangement, perhaps, is a little at fault, but we begin after a semicolon thus) being the highest number of votes cast at said election for persons eligible, under the Constitution of the United States, to be appointed electors of President and Vice-President of the United States, they are hereby declared duly elected electors as aforesaid for the State of Oregon.

That is a negative pregnant. The disparity of votes is shown. The fact of election on a general ticket is matter of law in the State. You have in the other certificate the clear certification of how the fact was as to who had the highest number of votes. Now this governor has undertaken by the insertion of the word "eligible" to cover himself from the condemnation of open and recognized fraud and falsehood, and he has undertaken by giving a reason, instead of obey-

ing the constitution and laws of Oregon, to save himself from having absolutely deserted his duty. If there ever was a State that had taken every precaution to provide that all these suggestions, all these surmises, that by some method of construction, by some usurpation of power, others than the men who received the highest number of votes could be deemed elected anywhere, in that State the constitution and the laws of Oregon had so provided. Why was not the word "eligible" put into the constitution and put into the laws as determining who should be the product of an election, who should be declared the product of an election, who should be treated as the product of an election? The constitution provides, as you have seen, that—

In all elections held by the people under this constitution, the person or persons who shall receive the highest number of votes shall be declared duly elected.

Concede for the moment that electors are not within that clause of the constitution, nevertheless this shows what the constitutional law of Oregon was with respect to what makes an election; and when the legislature has determined that the electors for President and Vice-President of the United States shall be produced by the method of election, and when they have a law which is not limited to anything except the question whether the election is in the State and ascribes the efficacy of the highest number the case is complete and final, as they do in this clause:

In all elections in this State the person having the highest number of votes for any office shall be deemed to have been elected.

That is section 40. But in the election law you will find the strongest provision as to the highest number of votes in the instance when it does prevent an election, because there are two for the same office having the highest number of votes.

In section 36:



If the requisite number of county and precinct officers shall not be elected by reason of two or more persons having an equal and the highest number of votes for one and the same office, the clerk whose duty it is to compare the polls shall give notice to the several persons so having the highest and an equal number of votes to attend at the office of the county clerk at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected; and the said clerk shall make and deliver to the person thus declared elected a certificate of his election as hereinbefore provided.

Had the clerk a right to discharge the duty limited to casting votes and the imperative obligation to declare the one who received the lot—had the clerk the right to substitute for that duty a determination that there were no two persons that had received the highest number of votes, and the lot was not required, because he thought one of them was not eligible? But the clerk has in regard to those officers every power that the governor has in regard to the other officers, (see section 37:)

In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes for either of such offices—

That is, the larger offices of the State—

the governor shall by proclamation order a new election to fill said offices.

Is not that an imperative duty on the governor when there are two having the highest number of votes? The law of Oregon is that disqualification does not elect the other, and that in that case there must be a new election; and has this governor the authority to determine that, instead of having a new election, he will commission the one, not that has the highest number of votes—for that is inscrutable, they being equal—but the one that he thinks is eligible? What be-

comes of the right of the people to have a new election? They voted for the men; they have produced that result; and they are entitled to the consequence of the election.

What then is the title? What does it rest upon? It is quite immaterial to you what the Cronin title in the abstract is. The point for you to determine is, which of these colleges is to be counted. There cannot be two colleges. When the civil law lays down the proposition that *tres facit collegium*, it lays it down in the assertion of a principle, not by an arbitrary rule. The principle of a college is that the majority governs, and that principle cannot be applied to a less number than three. One man is not a college; two men are not a college, for there is not a majority there unless it be a unanimity. Unanimity is not the essence of a college. So long as people are unanimous they proceed in their natural rights as individuals; but three make a college because the vital principle of a college is that the majority exercise the power of the college; and here what have you before you? A college of three; a college assembled; and what is Cronin's account of it? That all three met, and instead of saying anything short he undertakes to say that they refused to act as electors of President and Vice-President. Will you allow his statement, backed by the certifying names of two men who were not present—for they came in afterward and were chosen electors by Cronin, after the transaction upon which he bases the formation of his college—will you allow Cronin's statement that these two men resigned, declined, remitted, deserted the duty of voting for President of the United States to outweigh their own certificate, their own action, their own return, their own ballots that are here before you? I should think not. And if you are bound to look at the matter upon the legal question whether the majority of the college can fill the vacancy or whether the minority of the college can fill the vacancy, each having assumed to do it, you will have no great trouble

in determining that the majority anchors the college to itself, and that the minority is no college at all.

Supposing it to be true that these electors did not recognize Cronin, did not regard him as an elector; they had the right to that judgment. Nobody else, I think, regarded him as such except upon the experimental invention of him to see whether he could be manufactured to stand until after the counting of this vote. But did you ever hear that when a bank director or a member of any corporation or of any board, municipal or civil, under the Government of the United States or under the government of any State, did not recognize the title of one man claiming to be a member of that board, anything happened except that he was excluded, and if he was wrongfully excluded he must right himself by law? Other parties might question whether the action of the board taken after that exclusion was or was not lawful. But did you ever hear that the exclusion of a member of the board lawful or unlawful, just or unjust, authorized him to go and fill the board and go on with business? I think that is as great a novelty in the law of colleges, of civil boards, of governmental boards, or of private boards, as was ever suggested. If you depart from the proposition that whatever may have happened in respect to Cronin of injustice or exclusion, that did not make him the college, you have this absurd possibility in a State like Oregon, that you would have three colleges, each man preferring to throw the votes his own way and by his own authority. But if you adopt the rule that the majority constitutes the college, you put yourself under the protection of the principle which governs all corporate action, that there can be but one college, one board, because the majority draws to itself all the powers of the board.

Now look at the very peremptory direction of the law of Oregon in respect to the conduct of the board when it meets to discharge its duty—section 59:

The electors of President and Vice-President shall convene at the seat of government on the first Wednesday of December next after their election, at the hour of twelve of the clock at noon of that day; and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill, by *viva voce* and plurality of votes, such vacancy in the electoral college.

Can you have a plurality of votes when only one vote is cast?

And when all the electors shall appear or the vacancies, if any, shall have been filled, as above provided, etc.

They are not allowed to go on; they are not allowed to act for the State of Oregon until they are possessed of the means of casting its whole vote.

MR. COMMISSIONER ABBOTT: Permit me to ask you, Mr. Evarts, what would be the case if two of the electors had died since the election? There is but one left in the land of the living; must the State lose its two votes or three?

MR. EVARTS: If the whole three have died?

MR. COMMISSIONER ABBOTT: No; if two have died and there is but one left?

MR. EVARTS: If two have died and there is but one left, the State ought to exercise a power reserved to it to treat the election as having failed, or it may be the votes would be lawful. There is no existing law of Oregon, and no existing law of any State, that in its terms covers the case of there not being a college to proceed to fill vacancies. There can be no college when you are reduced to one. You have an elector, I agree, and it is certainly undesirable that the State should lose its votes. That I agree, and I agree that an honest effort to present the vote to the Congress here acting on the subject should receive every indulgence on the part of the political authority that deals with the question, but I certainly cannot as matter of law admit either under the act of Congress or—

MR. HOADLY: Will you permit a question? Does the word "plurality" there refer to plurality of the original number elected, or of those remaining after the vacancy?

MR. EVARTS: There is nothing that confines it to the whole number. It is a clear authority to them to choose by the plurality of a quorum.

MR. HOADLY: To those remaining?

MR. EVARTS: Of those remaining; but that does not touch the question of whether there should or should not be a quorum to act. The ordinary rule of corporations and colleges is that a majority of a quorum is equivalent to a majority of the whole. There must be some statute to the contrary. This college of electors consisted of the two men clearly chosen, that are not blotted out by any evidence before you, except the certificate of Cronin, not that they refused to act with him, but he says they refused to act as electors. Where is his evidence? Where is the record? Where are the minutes? Where is the notice in writing? Where is the absenteeism? That is not certified to; but they refused to act as electors, and he then proceeded to fill their places by his single vote.

Now, whether or not under the laws of some States that faculty could reside in a single elector, it does not reside in a single elector by the act of Oregon. Oregon had, by the provisions of the electoral law of the Union, power to provide for a failure of election. What was that? It was when the election failed, when there was no production of enough electors, if you please, to meet the true exigency of the law in that behalf, if it required a majority to be produced by an election; and it is in that case, and in that case only, that the State is allowed by the United States law to substitute in the place of the regular mode of election some secondary method. But it does not require the State to provide a different mode of filling a vacancy arising from a failure to elect, from the mode that they adopt for filling a



vacancy arising in any other manner. Oregon has settled that question for itself, that in *whatever way*, on the very day of casting the electoral vote, a vacancy in the college should exist, it should be filled. Thus, while the Constitution makes it absolutely necessary that there should be a personal attendance to cast a vote, and that a majority cannot cast an absent vote, because the voting is to be by ballot, and the ballots are to be counted, the State determines that by no chance will it lose a vote if there be persons present on that day who can fill the places and save the State its full representation in the electoral college.

The State of Rhode Island, finical as it was in its legislation, instead of making a better arrangement than this of Oregon and the other States, placed itself under a much worse system, according to the judicial opinion given by the supreme court of that State. Suppose that when the legislature of that State undertakes by a new appointment to fill the vacancies originating from a failure of the people to elect, it should be found that the legislature has filled the vacancy by a person, who, when he comes to the college, proves himself to be disqualified, what is to happen in that State then? The legislature has not given to the college the plenary power to fill vacancies. The resignation or withdrawal of the disqualified elector will not allow the college to fill his place. The same vice inheres in the choice by the legislature of an unqualified person that would arise from such an election by the people, and the State must lose the vote. To be sure, practically, in a State like Rhode Island, where the governor by blowing his horn at the door of the executive mansion can summon the legislature as the farmer's wife calls to dinner the hands from the hayfield, there would be no difficulty in suddenly supplying the vacancy; but for the great State of Oregon, where there were found insuperable difficulties in getting the legislature together, no such arrangement would be either wise or suitable.

Now, upon an examination of all these certificates I have been quite gratified to find that, although these operators up in Oregon were as harmless as serpents, they were also no wiser than doves. Nothing has been done there that defeats the Constitution of the United States, that defrauds the State of Oregon, that defeats the election of President. All that has resulted from the attempt to perpetrate and consummate a fraud is to exhibit the fraud to public condemnation; but the safety of the State remains unharmed.

## XI

### ARGUMENT IN THE SUPREME COURT OF THE UNITED STATES IN THE CASE OF FARRING- TON AGAINST SAUNDERS—DECEMBER TERM 1870. COTTON TAX CASE.

#### NOTE

The case of *Farrington vs. Saunders* involved the question of the constitutionality of an Act of Congress passed in 1866 by the first eight sections of which a tax was laid on cotton. The act was entitled "An act to reduce internal taxation, and to amend an act entitled 'An act to provide internal revenue to support the Government, and to pay interest on the public debt and for other purposes.' "\* After the case had been argued and taken under advisement the Court ordered a re-argument, in which Mr. Evarts, associated with Benjamin R. Curtis, took part. The Court below had sustained the Act of Congress and on February 20, 1871, the judgment was affirmed by a divided court. The Chief Justice did not sit in the case which was therefore heard by a Court of eight judges. The case is not reported. The facts of the case and the points raised sufficiently appear in the following argument by Mr. Evarts.

#### ARGUMENT

If the Court please: I am sure it is unnecessary for me to suggest that the case which we have the honor now to present for the second time to the consideration of this Court is an important one. As it touches the question of the constitutionality of a law of Congress it is, of course, important; and when that law is in execution of one of the principal acts of governmental authority and sovereignty, taxation, and when the principal end of the discussion (to wit, the conformity of this legislation with the Constitution of the

\* 14 U. S. Statutes, pp. 98-100.

United States or its repugnance to the Constitution) is one that is of extensive and, perhaps, permanent and not casual or exceptional application of the principles of the Constitution, its importance is still more obvious. Nor do I need to insist that the questions are deserving of the most attentive deliberation of the Court, for your honors' order that, after the very full and, on both sides, very able argument presented before (which I may thus speak of, as I had no part in it), that there should be a re-argument of the point, shows that it deserves from counsel and will receive from the Court renewed and more thorough investigation still.

There, if your honors please, the gravity and importance of this case ceases, for, in regard to the amount involved in the discussion, it is trivial—\$2,500, claimed to be refunded as illegally exacted from this plaintiff; and as matter of fact there exists, as I am advised by those who are well informed on the subject, scarcely any possibilities of a forensic or judicial consideration that affects any pecuniary interest. So, too, the condemnation of the law, if it should follow from your honors' judgment, does not strike down any part of the present operative powers or enactments of the legislature, for the tax some years ago, as your honors are well aware, was entirely repealed. So that your honors really occupy that most serene position, in regard to your highest constitutional power and duty, of passing upon the conformity of laws with the Constitution of the United States where you are really rendering a judgment that is wholly judicial, not disturbing in the least any of the actual operations of the Government or its laws, and not passing upon, or being able at any time to pass upon, any considerable pecuniary results from the determination.

For the future, your advice on the Constitution as to what its true powers are within the premises of this discussion may be received as the guide of subsequent legislation. In respect to the past, all that needs to be undone, or is to be

undone, or can be undone, can never be a judicial question except in the most trivial amounts, wholly resting in the same power that passed the law, to redress any grievances or any injuries that may have been inflicted under it.

As your honors, both in this case and other cases, and as the counsel on both sides in this case, are familiar with all the provisions of the Constitution and of the law in question raising the general discussion, I may, perhaps, be permitted here, before directing specific attention to any of those provisions, to ask your consideration of the general attitude under which the taxation clauses of the Constitution were framed in their present shape, the general motives which led to their adoption by the convention in their present shape, and the guide and key, as I shall respectfully submit to your honors, which the fair and just and thorough appreciation of these influences furnishes for the just construction in the matter of dispute, of the true meaning of the constitutional provisions.

If there was anything that might be said to have fully grown into the political sense and purpose of the American people from their previous experience as subject communities, and from their triumph in maintaining their independence, it was this: that there should be no taxation without representation, and no taxation except so far as might be in proportion to representation. It was not merely that communities not represented should not be subject to taxation by legislative power in whose constitution they had taken no part, but it went further than that, in a determination, so far as it was within the compass of wisdom and energy in the frame of a government, to provide that the capacity of taxation lodged in the common representative body should, as far as it was possible, be guaranteed and guarded in favor of popular rights against the framing of any laws passed by a majority of the representative body that should fall entirely upon a minority or a local division of the people.



These communities were diverse in their nature and domestic situation and interests. They were, as they considered themselves, independent and quite able to take care of those domestic and local interests, but not at all able, to their satisfaction, to take care of themselves as independent communities toward the rest of the world, and not disposed to trust themselves among themselves to jealousies and discords and contentions in pursuing their domestic interests. They, therefore, had the purpose to frame a general government that, in all its arrangements, in all its objects, and in all its powers of attaining those objects, should have intrusted to it all that should properly be described and understood as what was common and general to those communities in respect of their attitude to foreign nations and what was common and general among them in the matter of maintaining harmony and common concurrence of interest among themselves, so far as might be, but with an equally firm and an equally intelligent purpose of preserving to the independence and to the local control of these several communities all that might be fairly called domestic, or, in the language of Mr. Ellsworth, *the States were unwilling to trust their domestic interests to the General Government.*

Trade, production, trade among themselves, diversity of production, diversity of habits, of industries, of interests, trade with foreign nations, and the taxation or control or regulation which touched them—all these subjects appeared in their debates and shaped their determinations upon the very point of the problem to be settled in the formation of the Government.

Foreign trade was, in its nature, of common interest; but yet it might be controlled so as to bear upon one part of this country to the prejudice of another. Domestic taxation on subjects of general and common interest and duty in these communities towards the General Government should be subjected to the Federal exercise of that

authority; and yet the Federal exercise of that authority, if it were allowed to grasp the entire sovereignty of taxation at the will only of the legislative body, might be used, in respect of domestic taxation, so as to elevate and favor some industries and some local interest, and to disparage, to disfavor, to oppress, to extinguish other interests limited in locality or in the pursuits of the people. In this difficulty, therefore, and in the different ways of disposing of it, the convention found their greatest embarrassment, and exhibit, as we have always been disposed to admit, the greatest prudence, the greatest good temper, and the greatest intelligence in their solution.

Now, without finding in the Constitution, from any nice philological criterion, the precise meaning of the different words coming within the embrace of this general subject of taxation (as certainly it should not be expected that wise judicial legislation or practical discussion should do), we nevertheless must not overlook the fact that, in determining what the distribution of taxation or taxing authority on the different subjects of taxation and the appurtenant regulation of trade, of commerce, and of industry that followed from this control of taxation, this general purpose and this general intent and this claim of as complete execution of the purpose and intent as it was within the compass of the intelligence and of the patriotism of the framers of the Constitution to produce, must be taken as the best guide in determining what they meant by the particular arrangements that they adopted; and what they meant by the particular arrangements that they adopted was what the people meant in accepting the Constitution and surrendering their comparative local independence for the erection of this common Government.

Difficulty was found in several points of taxation. There was no one of the general methods of taxation open to sovereignty but what was thought to be exposed, in its

surrender by the different communities to the common Government, to dangers to themselves, and but few of the members of the convention ever thought, if any of them did, that a naked and absolute devolution upon the new Government of the whole undefined and unlimited power of taxation was, or should be, possibly compatible with the objects in view. Nor was there any determination or any concession that any one of the branches of this taxation, whether it was on imports or on exports, or on domestic consumption, could be left untrammelled and unlimited in the power of the Government; for when the subject of imposts or duties on importations, seemingly that which the common interests needed and the common necessities as well as the nature of the tax should most freely and fearlessly place with the General Government, was under consideration, it was felt—and the contest went on day after day with the greatest persistency—that the matter of imposts should bear in it, and in the very clause by which it was guaranteed, evidence that it was not unrestricted. And when they arrived at the subject of domestic taxation, then came the question of direct taxation, or taxation by way of excise or otherwise, not domestic duties that were capable of adjustment by consumption or arrangement after the tax was laid. How were these domestic taxes to be disposed of? Why, clearly in full preservation of this general purpose and in full view of the vital necessity and the vital interests that led to its restriction.

Direct taxation, if we may judge from the debates, so far as it lay in the minds of that convention in shaping the rule by which its exactions should be drawn from the communities, was regarded as a taxation upon wealth in distinction from a taxation upon consumption, for all the debates required firmly, as a part of the Constitution, that this matter of taxation upon wealth should be distributed according to what this convention considered a just rule of estimating the comparative wealth of these different communities.

It was proposed that there should be a fundamental provision that a ratio of taxation should be accommodated to a mixed or compound computation of population and wealth, and all direct taxation should be accommodated to the standard thus furnished. The progress of the discussion showed that, practically, it was very difficult to make a comparative estimate of the wealth of the different communities as distinguished from the ratio that should be attributed to their proportions in population; and, finally, the convention, by a somewhat general consent of the leading debaters and thinkers on this subject in it, settled upon this, which advanced them a great way in arriving at a solution that, on the whole, taking things at large, population furnished as good a ratio and proportion of wealth in the different States as any other.

After wealth was discarded and population furnished the ratio, then came the vexed question, what was to be done with this anomalous portion of the community that were slaves, and so property, and as slaves, not persons, and yet were men and, in that sense, persons. Then the arbitrary arrangement, coming from compromise rather than resting upon reason, in which I believe both sides thought they gave away altogether too much and each thought they acquired nothing of much value, resulted in adherence to population as being the measure by which the comparative wealth of these communities should be estimated and according to which direct taxation should be applied, and three-fifths of all other than free persons being counted in the enumeration, we have a Federal census. And your honors, in the perusal of these debates, will find that, in the provision of date and periodicity, a rule of estimate was insisted upon in a firm and definite legislation in the Constitution on the subject of this census as being one of the fundamental supports of the contrivance to produce and maintain, under the Government, the equality of burdens that it was intended should be borne,

Now we are very prone, when the history of the Government has shown that direct taxation has been very seldom and very narrowly employed by the Federal Government and that it was discarded, not only because it was not necessary and other forms of tax were so much more convenient and manageable, but because the constitutional rule of distributing the burdens of direct taxation was found to be inconvenient and somewhat distasteful even to the communities that had so strongly insisted upon it, in view I say of the history of the Government under the Constitution in its practical operation about direct taxation, we are prone readily to fall into a notion, in discussing and determining the provisions of the Constitution, that the rule of direct taxation was not of this solidity, this firmness, and this weight in giving shape to the Constitution, which from reading it is apparent and from the debates is made as evident as the sun in the heavens.

What did they think they had accomplished? They thought they had accomplished this: That no direct taxation (by which they meant what they regarded as taxation upon wealth) ever could be laid except on the Federal proportion thus arbitrarily fixed and furnished by the census; and that wherever this General Government invaded, so to speak, the province of direct taxation, which primarily and principally they regarded as reserved to the States, and necessarily reserved to the States, they should have at their command no power by which any combinations could force a direct tax upon any portion of this community to the relief and release therefrom of any other portion; and that they could not accommodate it, even in their discretion as to what was fair and equal, but were rigidly to adhere to what was the basis upon which, and upon which alone, the Constitution could be formed—the very rule that the Constitution adopted as to what was fair and equal, and that was distribution according to population; and that they should



not have it in their power to adopt an honest application of this rule of distribution under the actual circumstances of population when the tax was laid, and then keep it permanently after the natural processes and operations of society and of trade and of industry had diversified and changed the relation; but that, not only at the start and at the basis, there must be this rigid and faithful acceptance of the necessary cramp upon taxation which was imposed, but there should be a necessity, at frequently recurring periods of ten years fixed in the Constitution, of a reassertion of the standard to be accepted and acted upon in the real circumstances of the country.

Now, when we come to what (although the name is not used in the Constitution) may, in grouping them together, be called indirect taxes, there was the same intention, though not so strict a necessity in their judgment, of preserving equality, to avoid at once the competitions of cupidity and the disparity of favoritism; and it was attempted to prescribe certain articles upon which the taxation could be placed, and thus rigidly in advance fix in the Constitution for posterity, the precise regulation of the subject. That being abandoned, and certainly most wisely, an effort was then made to restrict it to general descriptive words that should preserve, as far as might be, a controlling influence on legislation and furnish a constitutional measure and circumscription of the bounds of taxation.

That was abandoned, and finally in their discussions, economical and political, they came to the conclusion that, in regard to this portion of the power of taxation, two guarantees would be adequate. In the first place, they do not fall upon wealth, but upon consumption or expense, and if the one condition, that the imposts and excises and other domestic duties, if there be any, that pass themselves round and distribute themselves in the natural movements of society upon the subjects of taxation—if there be a single

provision that these taxes, in their enactment, shall be uniform throughout the United States, then the question, whether they fall equally and fairly upon the population distributed throughout it, will be a matter that, in experience, the rule of consumption, where there is a certain freedom in the taxpayer as to how much tax he will pay, and where the communities can not be held to different rates of practical imposition by any contrivance or artifice of the taxing power, will determine, and this will produce the satisfactory equality.

That being disposed of, there was one other subject which, specifically and without determining whether a tax upon the prescribed subject would or would not be a direct tax upon wealth, or would or would not be an indirect tax upon consumption—the question was to be determined, how it shall be regulated; I mean in respect of exports. When you come to this discussion about exports you will find that this convention did not intend that its primary rule of equality—that no possibility of evading it by practical difficulties in applying it should override what they felt as the necessity of this rule of equality being fixed firmly in the Constitution. Exports, as we all know, where the complete sovereignty and the whole power and the whole duty in respect of taxation are devolved upon a single government, may well be a subject of taxation, and the power to regulate by taxation one of great importance to the community.

But here was the difficulty: When, in regard to foreign commerce, we allow you, the General Government, the control of the duties on imports, we see at once that whatever comes into the country, at whatever port of entry, whatever State it enters, comes from without the whole country, and comes into the whole country; and as we have provided the rule that your taxation upon that shall be uniform, and shall fall to the taxpayer through the means of consumption, we have produced equality. But when you come to exports,

it is in vain to produce by any artificial reasoning the impression upon us, representing these distinct communities, that whatever is exported, because it goes to a foreign country, is therefore to be treated as being exported in any practical sense from the whole country. It is an export from the place where it is produced, whether that production, from the community, from the local circumscription of interests where it is produced, be manufactures or agricultural produce, or whatever else it may be, and every effort was made by the commercial States of the union to retain, even if it were a circumscribed and limited, control over taxation on exports.

It was insisted that in time of war it would be necessary, would be important, and that an embargo would not be lawful, if exports could not be taxed in any form. But that was discouraged, justly discouraged, as a criticism deserving attention when examined, because, as was conceded on deliberation, a question of embargo was not a question of duty; it was a question of war and a question of foreign relations.

Now, without pursuing the matter further, all efforts to reduce the subject of exports within the limitations by which the Constitution had secured the equality in respect of direct taxes and in respect of indirect taxes on consumption, were found to be impracticable; and it was settled that exports were such a subject in respect of taxation that the only way these common communities could agree to dispose of it, in respect of the powers of their common government, was that it should have no power over it whatever in respect of taxation.

Your honors will observe that, in this attempted discrimination between direct and indirect taxes, what falls upon wealth is regarded as direct, and what falls upon consumption is regarded as indirect. Imposts and excises and other forms of domestic exaction on commodities or on the pro-

duction of commodities is really a tax upon consumption, because the tax laid is not really paid by the party upon whom it is imposed, and the law imposing it upon him gives him the means according to the natural operations of trade within a community of reimbursing himself from the consumer. The vigor of the law itself effects this, because, by the very nature of importations, no importation can be the subject of trade within our borders that has not paid the duty equally on introduction, and, by the law of our excise, no domestic subject made the means of a payment of a tax can be sold within the community without the tax having been paid. But, the moment you come to deal with direct taxation, there is no such faculty in respect of the person upon whom it falls, and the moment you come to deal with exports, as our laws drop their vigor with our boundaries when we lay a tax upon an export, we do not, by the vigor of our law, impart to the person who pays that tax a power of reimbursing himself from the consumer, because our laws, as is manifest upon the very statement of the case, have no prevalence of authority where the community consuming exports exercises its option as to the consumption.

We may then, if the Court please, see very briefly how these problems were solved in the actual arrangements of the Constitution. The first clause bearing upon taxation providing that "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers," furnishes the guide for the computation and the arrangement for its repetition. There, I apprehend, we have a distinct, permanent, and wholly inexorable proposition of the Constitution as to what is the nature of direct taxation; and I think your honors will find that whatever is meant by direct taxation by this Constitution is the complement of what is meant by the other forms of taxation that have a different rule provided for them.

The eighth section takes up a positive power to lay these taxes, which thus far have only been spoken of in the forms of indirect taxation. "The Congress shall have power to lay and collect taxes, duties, imports, and excises." Now, that stood until nearly the close of the debates of the Convention, as the whole affirmative power in this granting clause; and the restrictive or explanatory clause which now forms the last member of this sentence as printed in the Constitution, separate and apart from it, was postponed, but always with the notion that the first clause would not be enacted unless the second was. But the requirement that they should be brought side by side, and the limitation made a proviso, so to speak, or restriction in the very granting power, was resisted "till finally, on the completion of the draft of the Constitution" it was brought up and placed where it now stands, and I submit it is in the nature of a proviso or limitation. "To lay and collect taxes, duties, imposts, and excises . . . but all duties, imposts, and excises shall be uniform throughout the United States."

The ninth clause contains the prohibition on Congress that "No capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken." There had been an absolute provision that all direct taxation should be in that proportion, and it must be, I think, regarded as the specific function of this repetitious clause to guard against any pretense that a capitation tax, which was the subject in the mind of one at least of the great parties to the discussion, should ever be claimed not to be a direct tax; for all direct taxation had already been required to follow the standard of the census, and when the prohibitory clause comes a capitation tax is the only one specified. It must be to mark it out as free entirely from any possibility of doubt or discussion. But if you undertake to name the capitation tax in a prohibition, then, in order to exclude a conclusion that any other tax may be



otherwise laid there must follow this provision, after the words "*no capitation*" "or other tax shall be laid."

Then comes the provision in regard to exports. The phraseology of this clause which I am about to read has been the subject of comment by the Court, as well as in forensic discussions, but I cannot forbear from insisting that its language is very carefully and very thoroughly expressive of absolute prohibition in any form, at any stage, under any guise. The two words which confessedly comprehend every kind of taxation were "tax" and "duty," and both of these words are used in the prohibition. The prohibition is not applied to the tax on exportation; it is not even applied in terms to tax on exports. It is expressed thus: "No tax or duty shall be laid on articles exported from any State."

No tax or duty meant, no tax or duty direct or indirect. No excise, no form of taxation should impede exportation under any guise or under any theory. "No tax or duty shall be laid on articles exported from any State."

If the Court please, I will ask attention very briefly to the general provisions of our internal revenue system, into which and as part of which the specific act under discussion was subsequently brought.

The Act of 1862 or of 1864, for one as well as the other will answer the purpose of my present discussion. I ask attention to section 116 of the Internal Revenue Act of 1862 (Vol. XII, U. S. Stat., p. 488). Similar sections are found in all the other Internal Revenue Acts.

After the whole system of internal taxation is perfected, comes this provision:

*And be it further enacted*, That from and after the date on which this act takes effect, there shall be an allowance or drawback on all articles on which any internal duty or tax shall have been paid, except raw or unmanufactured cotton, equal in amount to the duty or tax paid thereon and no more when exported, the evidence being furnished as required by the act.

I submit to your honors that, under the internal revenue system, omitting, for the present, this exception about cotton, treating that as if it were not in the section, that under the internal revenue system of the United States no tax nor excise was laid upon any article that was exported. It was not laid in the guise of a general or domestic tax, and then left to be defended as not being a tax on exports; it was a tax upon consumption, as it was understood these uniform taxes were to be when they reached commodities, at least, subjects of merchandise or manufacture. Under that revenue system no man could say that any tax or duty had been laid on articles exported; for although the tax rested upon it while it remained and might be a subject of consumption, the moment that it appeared, or in the interest of its owner or his factor was to seek exportation, the law lifted itself to adhere to the Constitution, which from that moment protected it. That, then, was the general system, and that will be found to be the general system of taxation, either in regard to imports, which was intended to be a tax on consumption, and not a tax upon foreign commerce, or in regard to excisable articles, namely, that whenever either imports or domestic products sought exportation, drawback equivalent to the duty laid was always to be allowed, when it was possible in the computations and ascertainment of identity to allow it.

This then being the Constitution, and this the fidelity with which an excise was preserved from being under that name possibly a tax on an article exported, there comes this law of 1866, which is found in the fourteenth volume of the United States Statutes, page 98. Your honors have noticed that in this general-drawback clause of the revenue system of 1862, which was the first act, there is made an exception of raw or unmanufactured cotton, and no drawback was allowed it. This act was passed during the war, and there was a small tax of half a cent a pound. The only other clause in

that section which I refer to for a moment—the same section which excludes raw cotton from the benefit of drawback—contains a subsequent provision that whenever any manufactured cotton is exported it shall have, not only the drawback of the excise which it has paid as a manufacture, but the drawback of what the cotton that entered into its manufacture had paid as raw cotton. I mention this here, because it forms a topic to be considered in the discussion of the principal act. In addition to the three per cent which shall have been paid on the manufacture of cotton the exported manufactured cotton is to attract to itself a drawback of a tax upon the raw cotton which has entered into its composition.

If the Court please, the principal section of this cotton-tax act is this: “On and after the 1st day of August, 1866, in lieu of the taxes on unmanufactured cotton as provided in the act of 1864, as amended by the act of March 3d, 1865, there shall be paid by the producer, owner, or holder upon all cotton produced within the United States, and upon which no tax has been levied, paid, or collected, a tax of three cents per pound as hereinafter provided,” and the weight shall be ascertained by an allowance for tare, “and such tax shall be and remain a lien thereon, in the possession of any person whomsoever, from the time when this law takes effect, or such cotton is produced as aforesaid, until the same shall have been paid.”

The law impresses a statutory and effective lien by the weight of its own legislation upon every pound of cotton that then exists and upon every pound that shall be grown thereafter as it comes to maturity, and it must remain subject to that lien until it is discharged by payment, the only method provided. “And no drawback shall in any case be allowed on raw or unmanufactured cotton of any tax paid thereon when exported in the raw or unmanufactured condition.”

Now, if your honors please, you see the nature of this case. It is that the Congress imposes upon the cotton the moment it is produced the burden of this tax, there to remain until it is paid, and an express provision that it shall adhere to it as a tax laid upon it when it is exported, a sedulous and absolute provision that a tax be laid upon all the cotton in this country that shall adhere to it when it is exported.

The Constitution had said, no tax shall be laid upon any article exported, which, if it meant anything, meant that no tax should be laid upon an article to be exported which it should bear in its exportation, for short of that there is no vigor in the protection of exports from being taxed, and especially no satisfaction of so sedulous a protection as the Constitution has sought to throw around the subject in its language, which is that no tax or duty, which is equivalent, I must submit to your honors, to an enumeration of every possible form in which tax or duty could be specifically laid on an article to be exported, as if it had said, no tax, direct or indirect in its nature, specifically applied to the thing to be exported; no duty, excise or otherwise, shall be laid upon any article exported.

We will see what aid we get from the determinations of this Court in deciding whether a tax laid by the Constitution is to be protected against invasion on the one hand from the States, or a right in the States is to be controlled on the other hand by the legislation of Congress; and we will also see whether those principles do not far transcend any that are necessary to invoke in determining this matter of exports. The other clauses are familiar to the Court which substantially bind the cotton to the point of its production until the tax gatherer has effectively burdened it with the practical collection or security for the collection, and contain a penal guarantee against its removal, by affecting everybody who intermeddles with it in the ordinary course of management and transportation until the tax is paid or secured, making it

a crime to begin the very first step towards exportation without the actual payment of the tax or without the guarantees that attend the cotton to the point of the final exaction of the tax.

If the Court please, we say, then, that this tax thus laid is repugnant to the Constitution, and that if it be regarded as an export tax—as a tax laid on an article exported or a duty laid on an article exported—it is, in the very words of the Constitution, a prohibited tax. If it be a direct tax it is not apportioned; if it be an indirect tax it is not uniform.

The argument on the other side seeks to maintain its constitutionality only by claiming it to be an indirect tax or excise, and that it is not laid on an exported article. I have read to your honors an internal revenue act, which, it is claimed, is entitled to this proper description, that it lays an excise, but not upon any article exported. It is claimed that this cotton act lays an excise upon cotton, but not upon cotton exported.

I will first consider the question whether it be a direct tax. It is a direct tax, if at all, upon this relation to what is admitted to be in all the discussion a subject of direct taxation, and in regard to which no taxation can be laid under this Constitution, except by distribution according to the census—that is, a tax upon land. Now, is it or not a sound proposition that a tax upon agricultural land must be distributed according to the census? I suppose that it is. Is it true that a tax upon the crops growing upon agricultural land is, in the sense of taxation, a tax upon land? Is it true that, if such a tax, which in terms is embraced by this act, because it is on the growing cotton at the time the act is passed, is a tax specifically upon the agricultural products of agricultural land it is a tax upon the land? If these things be so, is a tax upon particular descriptions in climate and product of agricultural land a tax upon that agricultural land?

Without saying now whether uniformity is possible in re-



gard to a tax which is limited and local in its application to agricultural land, we are now considering only the question whether it is a direct tax when it is applied to the whole crop of agricultural land producing specific crops. Certainly there is no case in your honors' report or elsewhere that holds the negative of this. The observation in the case of *Hylton*, falling from Judge Patterson, favors the proposition that a specific tax laid upon the agricultural product of land is a direct tax, and thus apportionable; because, as his honor says, if it were otherwise, it would be very easy to elude the provision about a tax on articles exported. So that so far as dictum goes we have this saying of that celebrated judge and eminent statesman in the framing of the Constitution, Judge Patterson, that a tax upon agricultural products of land would be a direct tax.

It is not apportioned; it is not apportionable; and there comes the whole argument against its being a direct tax. I do not know, if your honors please, how thoroughly it may be held to be impressed upon the constitutional notion of this country, that it is a test, under our Constitution, whether a tax is direct, that it can or can not be apportioned. The doctrine as it is held in the discussions in *Hylton's* case is wholly unnecessary to the decision; for if there is any principle upon which the carriage tax is supported it is that it is a tax upon expense in the nature of an excise upon an article consumed solely, and is therefore laid upon the person possessing and consuming it.

But the discussions have been there commenced, and since continued, that it was a logical and legal and constitutional test of whether a tax was direct or not, that it was conveniently—that is, within the range of convenience which politics requires, which law making requires—apportionable. Now what is the language? “Direct taxes shall be apportioned.” “No capitation or other direct tax shall be laid” unless it be apportioned. Well, that must mean undoubtedly

that, in the sense of the framers of the Constitution, some direct taxes could be apportioned. But it by no means followed that they thought that all direct taxation which was at the command of a single community under a single government, could be applied and apportioned in this country and among these different communities. They have undertaken to say that no direct tax shall be laid unless it is apportioned; and to determine whether a tax is direct or not is by the nature of the tax, not by a philological definition, but by a practical consideration of what the framers of the Constitution had undertaken to do and had supposed they had secured. When you come then, as you will, to taxes which in their nature are direct, and can not be apportioned, I submit that it is a wholly faulty method of reasoning to change the character of the tax which is prohibited unless apportioned, and if not apportionable can not be laid, because it can not be laid until it is apportioned.

If this Government of ours possessed, or was intended to possess the whole fund of taxation that the communities living under it were to bear and their exigencies might require, there would be more force in that reasoning. Notwithstanding, it would still be faulty. But when we are considering what range of direct taxation this people have committed to their General Government, when confessedly direct taxation was a subject that every domestic community wishes to control and keep to itself, and when, coming to a subject of direct taxation which is not apportionable, you simply remit it to the control of domestic legislation, I submit that you are finding the precise situation which the framers of the Constitution, representing the interests of these several communities, insisted upon; that the only direct taxation that they would commit to the General Government was a direct taxation that was capable of distribution, and that whatever was not so capable was reserved to the States, for the resources and support of their own Government.

I agree, if you please, that when the Federal Government comes to apply direct taxation it finds but few subjects of direct taxation that can fairly claim to be apportionable, and agree, if you please, that a tax on cotton, which is only produced in eleven States, cannot be apportioned among the States where it is not produced. That proves, not that it is not a direct tax, but that it is not an apportionable tax. Then it remains, except so far as the States are interdicted from taxing it to the prejudice of the general interests, it remains a domestic subject of exaction and contribution. So of ice in New England; so of hemp in the West, and so of any local article when it is sought to make it specifically and by itself a subject of taxation.

While I do not claim that any guide is to be drawn against the tax not being direct, by reason of any difficulty of administering it one way or the other, yet I submit that it is wholly faulty to look to the definition of the tax as being direct or indirect upon the notion whether or not it is easily or possibly apportionable. Does this then withdraw cotton and ice and what not from the taxing power of the Government? No, every local and specific subject of taxation is capable of generalization which will bring it within a head that embraces other local and specific subjects of taxation in other parts of the country. If you want to put a tax upon the product of land, to wit, cotton land, put also a tax upon the product of the other agricultural land, to wit, hemp land and wheat land, and tobacco land, and find in your very difficulties and in the very restricted rate of taxation that can thus be imposed, the very point that the framers of the Constitution insisted upon as one of the firm landmarks of their Government; that no tax should be laid to which the constituents of the people who had voted for it should make no contribution; and that when you wanted to tax you must find a Federal or general basis upon which, as a Federal and a General Government, you could fairly demand

that you were distributing a burden according to the methods of the Constitution; or, that taxation was inhibited.

Your honors are familiar with the general legal doctrines and I need not repeat either the proposition or the authorities that all there is to land is its product, its income, its rents, its profits. We are all tenants whether we have a fee or not. We can not transport the land or remove it from the firm possession of the Government under which it rests, its power of taxation and right of eminent domain, and under the feudal system the incidents of tenure which answered all the purposes of the Lord paramount. If you will put a tax on agricultural products that fixes itself upon the very crops as they grow and before they are picked, you are taxing that land which produces those products; it is a direct tax upon that land. If you find it useful thus to tax, then you must have a comprehension of such taxation as, embracing the area of public burden for public uses, complies with the distribution of the Constitution.

Is it an indirect tax? It is claimed that it is an indirect tax. It is certainly, in a general sense, either direct or indirect. But to come to the language of the Constitution, it is either a duty or an impost (which last it is not) or an excise. And to reduce the matter from the indefiniteness of duty, if it be not a direct tax, it is an excise on consumption.

Let me, however, go back for a moment to say that the great test of whether a tax is indirect—as to whether it bears upon wealth, or whether it bears upon consumption—fails to protect the tax as an excise whenever the tax is extended beyond the consumption which the excise warrants and pays for the enjoyment of. Whenever you put a tax of the nature of an internal tax upon what is exported, you do not make the payer a tax-gatherer for the Government; he pays it out of his wealth, out of his cotton, and your laws furnish him no means of getting it back at all in a foreign country—not the least; so that when you come to claim that a tax is

an excise you must understand that the limitation of an excise is a tax laid upon domestic consumption. It is indirect for that reason—that when it is laid and collected it has not fallen upon the person that bears it. He is a mere collector, and whom it shall fall upon depends upon the usage, the conveniences, the circumstances of the community, as making them consumers of the article that has borne the increment of price given it by the excise tax. Therefore, this cotton tax, besides being a tax upon the crop and the whole crop of cotton-producing land in this country, is, in respect of its falling upon that cotton as an exported or exportable article, not a tax indirect and of excise, because the payer of the tax, in respect to that exported article, has no means of collecting the tax which he has paid.

Is it an excise? Well, if it be not a direct tax it is, I suppose, an excise, because it falls upon a commodity an article consumed by the community; and excise, I suppose, covers that. There are other taxes—stamp duties, succession duties and other domestic duties—but when you are dealing with an article of product or merchandise the tax is an excise tax.

Is it uniform? Here is a map of the United States of America, and of the circumscribed territory of the cotton belt or cotton-producing region of the United States, showing, in the first place, that it is wholly and continuously local, touching only a portion of the country and leaving the rest unaffected. It includes portions of the territory of, I think, eleven States and no more, eight really being what are called cotton-producing States.

Now, the provision of our Constitution is that all excises shall be uniform throughout the United States, and this tax is laid upon this cotton, irrespective of the question whether it is consumed within this territory of the United States, or whether it is consumed abroad.

An argument might be made that if a tax is laid—I do not think it would be a sound one or fulfill the obligations of



the Constitution—an argument might be made that no matter how circumscribed the origin of production might be, if the excise was finally distributed on consumption, then the consumption pervading the country, or possibly pervading the country, there might be a uniformity thus distributed. But I submit to your honors that no such limited construction as that is possible, and, whether it be so or not, this act is not an act which follows this article and collects it from the people of the United States, among whom it is distributed by consumption. It exacts it from the producer within this limited belt of territory, although the whole of it should be consumed abroad. In that sense, and in that event, it in no respect is an excise, and in no respect finds its equalization in consumption.

The actual figures of the trade of the country are that about five-sixths of the cotton go abroad, and one-sixth, at the utmost, is consumed here. There is no method of consuming cotton except by manufacturing it. This is the actual situation of this property that is taxed. It can not be necessary to argue that this localization of the tax by the laws of nature, the lines of climate, is just as definite and a much more inexorable limitation than any statutory limitation could be. If this Congress had laid a tax in terms of excise upon all cotton produced within these States, naming them, it would be no more a limited or a local tax than it is in adopting the description of tax as of land producing cotton or of cotton produced on land and there made taxable, as it is. The arrangements of the Government have distributed the cotton-tax officers only through this local territory.

Now, uniformity can not be departed from, because a subject of taxation is not uniformly distributed. If you wish to tax under a rule of uniformity certain products that are of local growth, as cotton is here, then you must have a rule of uniformity by adopting a subject of taxation which is in its description and definition capable of uniformity. The

subject thus described is distributed, not growing on every acre, not growing in every township, not growing in every county, and of course not equally growing, in regard to its products, in the different sections of the country. Nevertheless, you have determined that you will resort to crude agricultural products for taxation (and crude agricultural products are distributed all over the United States) and lay your tax upon such products at the rate that the representatives of all those products that are to bear the tax can agree upon; and if they can not agree then you will not have the tax and their constituents will be entirely unaffected in their pursuits.

Here, then, your honors see that the fundamental ideas of the Constitution are not to be broken down, because a legislature under particular circumstances finds a difficulty in its appetite for revenue to arrange it satisfactorily. I do not insist, as a legal point, that at the time this tax was laid the whole region of country that bears this burden was unrepresented in Congress. But the fact shows how it is that, if people are to lay taxes that their constituents do not pay and that do not affect the industry and pursuits and modify the property and the prospects of their communities, they lay them in a different way from what they would if they observed the rule that their constituents should feel the first pressure in common with the rest of the country. That was the purpose of this arrangement of the powers of the General Government.

But verbal uniformity is of no consequence. Massachusetts could not gain permission to tax teas, as against the importation privilege, by taxing teas whether the growth of Massachusetts or not. There are no teas the growth of Massachusetts, and this tax gets no uniformity by not having used words of circumscription.

Our proposition then is this: That you never can except from the obligation of uniformity an excisable article be-

cause it is of limited production, but that by its very nature it is protected by the Constitution from an exclusive burden of taxation, and can be introduced into a common and general and uniform burden only by the larger measure of taxation which adopts it, not in its specific and limited growth and product, but in its arrangement as one of a class of taxable objects that bear the burden.

Your honors will look in vain through the internal revenue system of the United States for a taxation upon agricultural products at large, or for a taxation of agricultural products in any considerable form, if in any form at all, unconnected with manufacture. There is an important authority upon this subject in 2 Black, page 510, doubtless familiar to the Court, of *Gilman vs. The City of Sheboygan*, a Western case in which his honor Judge Swayne delivered an elaborate opinion of the Court and which passed upon certain State legislation which had administered taxation under a constitutional clause that required uniformity therein. It was held that—

The constitution of Wisconsin requires the rule of taxation to be uniform, and this means that all kinds of property not absolutely exempt must be taxed alike, by the same standard of valuation, equally with other taxable property, and coextensive with the territory to which it applies.

And the local, the State, law was denounced by the judgment of this Court as unconstitutional because it exempted classes of property from taxation.

I now come, if the Court please, to a further consideration of the question whether this is a tax or duty on an article exported.

The particular statutory provisions which hold fast to the cotton contemplate its export on the very face of the act, and exact the tax notwithstanding exportation, making it impossible to export it—physically impossible, I mean—

without the payment of the tax, unless the law is evaded by fraud. You cannot export it from the interior of Alabama without moving it to a seaport. You cannot move it from the district in which it is produced, which is the first motion towards exportation; you cannot carry it to a port and export it without the payment of the tax. Even when it appears that it is not going into consumption, and so cannot be a subject of excise proper, but is to go abroad, and is a subject of export actually and in fact, still the tax must be and is paid.

The only answer that is made to this being a tax laid on an article that is exported, which it certainly is, and must be paid, is that it is also laid upon an article not exported. Where do you find a warrant in the Constitution to lay a tax upon an article exported, if you will also lay a tax on an article not exported? The very intent, the inexorable, unappeasable demand of these producing States was, that under no exigencies of commerce or of trade, or of manufacture, should the shaping of the destiny of their staples as for home or foreign consumption be determined in the least by Federal legislation; and they used comprehensive language.

What would your honors think of a law which provided that when cotton was exported the exporter should pay three cents a pound tax before it went on board ship, and that when it was manufactured the producer should pay three cents a pound when it arrived at the mill? Is it less a tax on the cotton reaching the ship's side for exportation than some other cotton that has gone up into New England to be manufactured bears an equal tax? And yet the language of this law, where the effort lurks in generalities to make it appear an indifferent subject of consideration and a general or universal tax on cotton, is precisely of the same nature and efficacy as I have proposed.

Let us look at this subject as illustrated in the debates which I will very briefly refer to. They are contained in

Vol. 71 of the Congressional Globe, page 2474, and were had in the House of Representatives. This is the body of our Government in which revenue measures arise.

Mr. Stevens, the leader of the House, the head of its financial arrangements, introduces the subject in this way:

If the gentleman from Michigan had not moved to reduce this tax I should have moved to amend by striking out "five" and inserting "eight." I think there is very good reason why this one article should pay a very large portion of the taxation which we are obliged to raise. If we had a right to lay an export duty, which the Constitution at present forbids, we could, with an export duty of ten cents per pound, raise \$200,000,000 annually, while at the same time protecting our own manufacturers and selling abroad just as much cotton as we do now. Under the circumstances we must do the best we can. The only thing we can do is to lay an internal duty and then allow a drawback upon that portion of the manufactured article which is exported.

The effect of that was to allow a drawback on every pound of cotton that was manufactured, whether sold in this country or exported. Mr. Stevens, who had, by the way, honestly proposed an amendment of the Constitution repealing this restriction of taxation on exports, and proposed to satisfy the Constitution and what he regarded as the interests of the country, in that way, said:

I agree with the gentleman from Maine, if you could fairly reach what he is at; that is, if he would make it ten cents, and then withdraw the home duty so as to leave it on the exported article, it would come to just what I propose in my constitutional amendment which I sent to the committee the other day. (That was a repeal of the clause of the Constitution so as to allow a duty to be laid on exports.) I think there never was a grander time in the world for the manufacturing of all the cotton for the world wherever civilized man exists. An export duty of ten cents on cotton would give to your home manufacturers the market of the world. That is the true way to protect home industry and to wrest from foreigners a revenue which shall pay off your national debt. That is what ought to be done.



I suggest to the gentleman from Maine that I would go for an amendment of ten cents provided it was not liable to the objection, as a gentleman here suggests, of chasing the old fellow around the stump, for it is whipping the devil around the stump there is no mistake.

Now that pastime, no doubt, was engaged in, and from the best motives; for I do not believe there was a particle of conviction that this principle, this whole economical theory, that you could make Europe pay the tax, was entirely fallacious; for instead of Europe pertinaciously paying the tax our cotton culture was in danger of being destroyed. Our people came to feel this and the tax was repealed. That experiment was precisely the one which the staple-producing States refused to allow the Federal Government to try—they put it in the Constitution that the Government should not try it—on any theory of building up the manufacturers of the North, of giving our manufacturers the markets of the world for manufactured cotton—those were precisely the things which the staple-producing States thought would be pressed upon them.

That was the nature of the financial scheme. The house felt it so; the community felt it so. How would that have stood as a proposition to be made by Mr. Ellsworth or Rufus King to the delegates from the cotton-producing States, the staple-producing States of the South, as being the kind of law that they would pass under a constitutional prohibition that no tax should be laid on an article exported? We must do the best we can; we will lay a tax that shall get the whole revenue of the Government from cotton, and take it off the part which the New England States manufacture—yes, and give it to the manufacturer. That is exactly what has been done. We will take every dollar of it from you, whether the cotton be manufactured in this country or be exported. All that you export as crude cotton shall pay the tax inexorably. All that the New England

manufacturer exports shall take back, cent for cent, the tax on every pound of cotton which has gone into his establishment for that purpose. I do not think Mr. Ellsworth or Mr. King would have felt like pressing that as a performance of the constitutional obligation thus undertaken.

Well, they bore this matter of the tax on cotton that was manufactured here and sold here, very ill. It was a pretty burdensome tax upon our people, and Mr. Lynch of Maine made this motion in regard to the clause that excluded cotton from a drawback in the internal-revenue act.

I move to amend by striking out, in the second line of this section, the words "when exported"; and also the words "and exported" in the eighth line.

I am not ascribing want of patriotism or want of intelligence in saying that the staple-producing States would have refused to subject their staples to such a tax, but would have said "we will not form the Union if you insist upon it."

If your honors please, after the decision in *Brown vs. The State of Maryland* (12 Wheat., 419), you do not need to teach that constitutional obligations can not be avoided by forms and words. The State was not allowed to levy a tax on imports by requiring persons who sold imported goods by wholesale, bale, etc., to take out a license for which they should pay fifty dollars.

I also ask your honors' attention to a case in 3 Keyes' New York Court of Appeals Reports (it seems to be an irregular part of the series) to show how faithful that State has been to the Constitution in this very regard. It was a case in which the litigation was conducted, and in the court of appeals was argued by me as counsel.

The State of New York took it into its head that it would be a very convenient thing for it to raise about ten millions of revenue upon the sugar and coffee that the Western people consumed by taxing their sale in New York by brokers. They did not pass a law taxing them specifically and solely,

but they passed a law by which a cent a pound or half a cent a pound ( a very moderate tax) was laid upon all these sales, and included in the tax articles that came from beyond sea—imported articles. They required every broker effecting such sales to give a bond that he would account to the State, and made it penal for him to sell a pound of the described articles until he went through that process. Several hundred men of respectable character and importance in commerce complained that they were virtually interdicted because they could not pay such a tax. Had it been collected it would have produced to the State of New York twelve millions of dollars, a greater part of it coming out of other States of the Union.

I was consulted, and advised a refusal to give the bond and to stand an indictment. The case was made; it went up to the court of appeals, and I supposed that I would have to come here. But the State court disposed of the question, decreeing the law to be unconstitutional. On page 374 is this language:

A State cannot impose a duty upon articles which have been imported for sale until the importer has either sold them, or divided them into smaller quantities by breaking up the casks, packages, etc., so as to destroy the character of import which subjected them to duties under the laws of the United States.

After they have passed into the mass of general property by being sold by the importer either for consumption or resale, they may be taxed in common with other property. Until such sale is made the articles retain their character as imports, if the packages in which they were imported remain unbroken.

This did not require that they should be in the hands of the importer, and they were not all of them by any means. Wherever the State can follow an article as being imported from abroad and tax it because it is so imported, there the Constitution of the United States can follow it and protect it. Apply the liberality and the intelligence of these decisions to this export tax and see whether it escapes from the

inhibition of the Constitution, which is "No tax or duty shall be laid on articles exported."

Now the argument is made, can we tax an article before it is known whether it will be exported or not? You can undoubtedly in good faith execute your power of taxation and reduce within it the articles which you intend to embrace, provided you liberate them from the tax when they begin their character of export or are seeking exportation. The forms of the law, laying a tax which is liberated on exportation, as in the general excise law, is not to be made a ground of complaint. It is the substance we look to, on both sides.

The question is whether it is true that, notwithstanding the act of Congress, no tax has been laid upon exported raw cotton. When the manufactured cotton starts from New England for exportation you may very well say no tax has been laid on that manufactured cotton about to be exported, because, though a tax was laid on the raw cotton, supposing it might not be exported when manufactured, yet the moment it shall evince its right to protection as an exported article the tax returns, and it is as if it had not been taxed. Now, you may fairly describe all manufactured cotton that goes from our ports as having no tax laid on it by this act; and by the same rule you must find that every ounce of raw cotton goes from our ports burdened by this tax, never to be retrieved by any authority from this Government to collect it from the consumer.

The rules of trade are set forth in our brief, which I cannot here repeat, and they show that during the whole period of the prevalence of this tax the price of cotton did not rise one iota from that cause. It rose by the course of trade. New regions of the earth's surface were encouraged to yield this product, and, assisted by bounties, poured their confluent streams into the great markets of the world. Liverpool fixed the price, and that prevailed generally. New York fixed it for the domestic producer. He bore the tax and

paid it, which, if persevered in, would have extinguished the production of this country and given the control of the markets of the world not to the United States, as Stevens fondly hoped, but to the unmanufactured cotton of other regions.

If the Court please, there is always danger, at least always room for a cynical insinuation in regard to verbal constitutions, that they can be infringed by verbal laws. Our Constitution has provided the present and vigilant, independent, judicial inspection, ever alive and ever adequate to compare written laws with a written constitution. And it is in the power of this court, as it has been its high and beneficial office heretofore, to insist that the conditions of the Constitution shall be preserved. If they be violated, notwithstanding judicial criticism establishing the correct standard, there is no fault in the constitutional provisions that have maintained this great arbitrament for the defense of the Constitution, by your judgments.

I submit that when the great financial leader of the party possessing legislative control had inserted this provision in the act, that it was coming as near to producing this result of a violation of the prohibition of a tax on exports as he could come; that it invites the jealous scrutiny of every lover of liberty and of the Constitution, whether he have a special duty imposed on him or not, to examine whether it does not violate the Constitution. But your honors hold that duty, and it is for you to say whether it ever can be apparent that the practical consequences of a violation of this or any other tax clause of the Constitution are effected by the accused legislation; and it is enough to say that, if that is so, it is a violation of the Constitution as this Court did in *Brown vs. The State of Maryland*, and as is done in every such case applying its criticism and proscription to State legislation. Your honors will now pass upon this tax law, a law of the United States which has no other or better authority as against the supremacy of the Constitution than the State legislation has.



POLITICAL AND PATRIOTIC SPEECHES AND  
WRITINGS



# I

## MR. WEBSTER'S POSITION\*

The solution of the grand problem of Availability now attained, all men who have been engaged in efforts either to favor or thwart its successful issue stand gazing at the catastrophe; as from widely different positions, so with very diverse feelings and opinions. The great mass of the Whig party, to their confusion and dismay, find that this god of their idolatry—in whose name they have vowed vows, at whose shrine they have made so many costly sacrifices of duty and principle and pride; whose treacherous power has nerved their strength through many a contest, and whose illusive smile has led them through mocking victories to seeming triumph—is, after all, but a false god, and has now, in their hour of discomfiture, “no eye to pity and no arm to save.” The great body of their antagonists look upon the result with wild delight, with as much extravagance of self-gratulation as if their own arm had wrought it out—certain that great ruin has fallen upon their foes, and deeming that all the virtue which has passed out of their late victors shall become a substantial accession to their own proper strength.

Apart from these latter—though included within the same general party lines, viewing all these matters from a higher point, in a wider scope and with a clearer insight—is gathered a class of men, which has gained of late years a vast influence in public affairs, and the members of which we may characterize as devout believers in the Democratic creed, and earnest teachers of that political faith. These men have something of a religious zeal about them, and look upon

\* An article appearing in the “New World” October 2, 1841. A reference to the circumstances in which the article was written may be found in the general introduction to this collection.

this singular concurrence of events with a kind of holy rejoicing that some higher power has from such evil educes such good. More shrewd than the enthusiastic masses whose movements they guide, they perceive that developments thus far indicate only a weakening of their adversaries without any sure promise of a proportional addition to their own strength, and are watching and deliberating how they may best secure so desirable an end. *Silent expectation* is their true position, and, never impolitic, they have thus far maintained it.

On the political arena there is yet another group, made up from the most homogeneous section of the hybrid Whig party, whose relations to the present crisis are to us more interesting, and whose movements we watch with a more earnest solicitude. It is composed of men who, from their very moral constitution, not less than from their social position, are sincerely conservative in their views—men who had long been accustomed to see their opinions widely separated from all external stations of power—who had cherished their principles in the uncongenial atmosphere of a minority only the more closely for its coldness—who have contented themselves as well as they could with indirect *influence* in public affairs, when they could not exert a *control* over them, able only to modify and thwart the plans of their opponents, without succeeding in proposing or carrying out any positive ones of their own—who, deceived by the magnificent promises of this great solvent—*availability* which was to transmute their cumbersome masses of ore into shining coin current with the people—suppressed the remonstrances of their better judgment, joined heartily in the late contest, shouted loudly in the chorus of victory, and now feel most acutely the appalling hollowness of their triumph. The ready relief, which the great body of their coadjutors find by ascribing the sad reverse to a dispensation of Providence, which no prudence could foresee, and to the

treachery which no *honest* sagacity could have suspected, assuages in no degree their self-reproaches. Confessing (and in another sense than Hotspur meant it) that

Never did *base and rotten policy*  
Color her workings with so deadly wounds,

they defy a similar delusion, *ne bis in idem*—their best maxim of consolation.

We have prefaced the immediate consideration of the subject, indicated in the title of our article, by this general survey of the position of parties, because it serves to explain the different lights, in which the position and conduct of the prominent men of the Whig party are regarded by those who hold these various opinions. Discordant in their views of the nature of the sudden changes on the scene of politics—their estimate of the ability and dignity, with which the great actors in the drama have played and are playing their parts, could not be expected to be more uniform. Agreeing closely with neither of the classes we have described—though the tenor of our previous articles have left it little doubtful with which we most sympathize—we venture now upon an attempt to define the relation to the Whig party, in the present conjuncture, of that eminent statesman, eminent ever in personal renown, eminent now in official station—Daniel Webster.

The *Whig* party, in its present *organization*, can hardly be traced farther back than the Presidential election, which resulted in the elevation of General Jackson to the Chief Magistracy—its *name* is of much more recent origin. It was then, unquestionably small in numbers, but compact and substantial in its constitution, and homogeneous in its one essential principle—conservatism. During the period of twelve years, and until six months ago, it was in *opposition*; the only portions of its creed, which that relation required to be brought into view, were *negative*; its vocation and office



merely *destructive*. During this period, it gained greatly in numbers, and in the last few years with remarkable rapidity. To the accurate observer, however, it was obvious that this increment was not from the *conversion* of the floating masses, or of the loosely connected portions of the Democratic party proper, to Whig principles, but by an *accommodation* of those principles to these acceding bodies. To such an observer it was no less obvious, that when this same party should come into administration; when its *positive* creed should, by the change of positions, be drawn into the broad light of public discussion; when its vocation and office should become *constructive*; and when indefinite and unlimited accommodation should be no longer possible, some quarrel should ensue as to what Whiggery was, and as to who were Whigs. In such a state of things we now are. The accident of General Harrison's death *precipitated*, but did not *cause* it.

During the whole course of the opposition, who ever doubted that Mr. Webster was a Whig? Who ever doubted that his constituent, the State of Massachusetts, was Whig? In what battle with the administration was not he a foremost and effectual champion? In what prolonged contest did not *she* hold up his hands? In every fundamental debate his heart was bold and his voice loud, and upon every important measure *her* public action directly supported him. When, in the memorable struggle to preserve the integrity of our Legislative Records, the "live thunder" of his eloquence shook the Capitol, its tones were reverberated in the solemn "Protest of the renowned State of Massachusetts." In his popular progresses through the East and the West, the North and the South, his own self-denying exertions and the high enthusiasm, with which the *Whig people* greeted him, show that he was a Whig, and nothing but a Whig. If Mr. Webster was not in profession, in principle, and in action, a Whig statesman, Massachusetts was not a Whig state.

At the moment, then, when the Whig party assumed the

administration of affairs, Mr. Webster, by an arduous course of party service, had earned the title of a leading Whig, and was placed at the head of the Whig Cabinet. *His* principles, *his* policy, *his* official career were *a priori*—in the general doubt as to *what* Whig principles were, and *what* Whig policy would be—as authoritative an exponent of such principles and policy as any one man's could be; and it is only by *specific* and *positive* acts, inconsistent with the general scope, or fundamental arguments of the Whig faith, that he can be convicted of treachery or defection. Has any such been pointed out? Has any such been suggested? His continuance in place, which is a fact, and his coalition with President Tyler, which is a conjecture. Any others? We believe not. Not satisfied with denying that in these regards Mr. Webster's conduct has been actually treacherous or dishonorable, and proposing to make them the subjects of some positive averments, we pass to a brief review of his short official history, in no other aspect, however, than to show that it has been thoroughly Whig.

The whole Whig party when in opposition, had made it one of their gravest charges against the late administrations, that, absorbed entirely in bargaining for votes and general manœuvring to confirm and perpetuate their reign at home, they had entirely neglected our foreign relations; or, if concerning themselves about them at all, had only done so to make our honor and our duty toward other nations a matter of political traffic. The popular mind, as neither particularly careful of so remote concerns nor peculiarly capable of judging them, did not make this a very prominent topic in the electioneering contest. But a body of thinking men, confined to no one section of the Union, and who will not willingly concede themselves to be the least important, the least substantial, or least influential portion of that party, deemed the settlement of the questions pending concerning our boundaries and border difficulties, the eleva-

tion of our national character to its appropriate height, and the reparation of those injuries which we had sustained from the weak conduct of those affairs by the last administration, tasks inferior neither in magnitude nor difficulty to the domestic duties of the new administration. Mr. Webster's accession to the chair of State, was hailed by these men with sincere delight; and his official life, short as it is, has numbered many decisive acts—acts too, which are but initiative to an extensive system. In what one of these has not every prominent Whig sustained him? In what one of these has not every prominent Democrat carped at his skill, and assailed his honor? His conduct of our foreign relations has, then, been thoroughly Whig.

In those important measures of domestic legislation, which the extra session of Congress has brought to a successful issue, wherever his official station permitted him to exert his influence, it has not been wanting. On the land bill and the revenue bill, his opinions have been long fixed and publicly declared, and his recent letters express his hearty joy at their passage. In the success of the Bankrupt bill (the only Whig measure which has passed without curtailment or enervation) Mr. Webster had no secondary share. Never included in Mr. Clay's list of Whig measures, as the earliest result of discord and dismay caused by the first veto, it had been out in the House by a decisive majority—and this was deemed but the prelude to a similar disaster awaiting the other important bills pending in either House. In a speech of earnest eloquence, which, in the ears of those who heard it, transcended any efforts of senatorial eloquence they had ever listened to, he revived the drooping spirits, confirmed the energies, and animated the patriotism of the Whig Congress, and this "great measure of justice and benevolence" was given to the people. The next morning witnessed its passage—a result not dreamed of the day before. Then, one after another, the other bills

passed and the integrity of the Whig party was preserved—by whom more than by Mr. Webster? In his influence over our domestic legislation, then, he has been decisively Whig.

On the subject of Mr. Webster's continuance in place when the other Secretaries had resigned, we might content ourselves with showing that, under the peculiar circumstances of the case, the dictates of a high patriotism required him to remain at his post, though personally his position should appear for a short time equivocal: and then we might ask if his situation from its being *patriotic* ceased to be Whig.

But the position of Mr. Webster, in a mere party point of view, seems to us clearly one of rare dignity. His letter of the 25th of August to the Massachusetts senators throws much light upon the matter. With President Tyler's relations to the other heads of departments than himself he had nothing to do. President Tyler's relations to the *Whig* party, *as a party*, were by his second veto in no degree altered from the position they assumed upon his first exercise of that prerogative.

The same high considerations which induced Mr. Webster to throw himself into the breach on the first occasion, led him to strive to avert the occurrence of the second. Had the counsels contained in the letter referred to been heeded, a second time would he have preserved his party. It listened to him once and was saved—it disregarded his second appeal, and is now dismembered. When, however, the catastrophe had taken place; when his party had been point-blank thwarted in his darling measure by executive caprice, he saw no reason for playing that most foolish and most profligate game in politics, "the whole or none." As the first veto had never been to him (though the House thought otherwise) a sufficient reason for throwing out the Bankrupt bill, so did not the second one fully convince him of the necessity of embarrassing our foreign relations and



going to war with the most powerful nation of the earth, on an issue on which we morally and legally have the wrong, and should unite against us all the civilized nations on the globe.\*

Many people sincerely thank him for taking so sensible a view of the matter. Disordered mails might well rest for a few days for Mr. Granger's successor. An empty treasury might well do without an empty head. A week's interregnum would encourage the naval whiskers and mustache to no alarming growth; and nameless Indian agents might perhaps, in that time, render themselves notorious enough for detection. All these evils the country could bear; but war, *war* under present circumstances, no one can endure to think of for a moment. In his continuance in office then, Mr. Webster has acted pre-eminently like a Whig.

But some say, admitting that patriotism and duty to his party might have induced Mr. Webster to maintain his place, still *personal honor* should have compelled him to resign. Without stopping to expose the absurdity of such an opinion, we remark that there is no evidence of any personal injury to Mr. Webster's honor or feelings. The fact that in a Congressional career of twenty-five years he has never had the slightest personal difficulty with any man, will be pretty nigh conclusive evidence to many that nothing like what is commonly meant by a "personal insult" can have been offered to him; and that the "official insult," which Mr. Ewing discloses, did not extend to Mr. Webster, the letter of the latter, of August 25th, satisfactorily shows. If we will closely look at the *real* reasons for the resignation of the ex-Secretaries, we shall instantly see that none of them apply to Mr. Webster. Messrs. Bell and Crittenden resigned because the popular clamor in their section of the country and Mr. Clay's wishes required them to do so. Mr. Ewing for

\* In this opinion, we beg leave to express a most entire dissent from the views of the able and eloquent writer of this article.—(Ed. "New World.")



the same two reasons, and the additional ones that he was disagreeable to the President, and had lost his confidence. Mr. Badger, for the two reasons aforesaid, sharpened somewhat by a Southern punctiliousness, which exacts so many sacrifices, lest some one should think somebody had insulted somebody. Mr. Granger very unwillingly, but because, being always accustomed to do as other people told him, though he tried hard, in this instance he could not break the habit.

To none of these considerations could Mr. Webster yield. Himself too *substantive* a person to square his movements by Mr. Clay's wishes, sustained by the universal approbation of New England,\* *entreated* almost by those statesmen whom the country most respects, possessing the fullest confidence and highest consideration of the President, he retained his *position* and the Whig party will bear him out in it.

It will be perceived that our whole purpose has been to show that Mr. Webster's career and present position have been, and are, thoroughly, decisively, pre-eminently Whig. It would have been a more grateful task to exhibit him in the quality of a *patriot statesman*, a fit theme for an abler pen than ours.

We are amused at occasional paragraphs which speak of Mr. Webster's position as *equivocal*, as that of a *disappointed* man, as even *pitiable*. No man in this country has ever enjoyed more proud (and more honestly proud) moments than he. No one can read the renowned speeches which mark his progress through the nation, after some arduous service achieved for his country, without wonder at the multitude of great *opportunities* which have fallen to his lot, and admiration at his noble bearing in them. Cicero boasted that he alone of Romans had enjoyed a "Triumph" in civic robes. Mr. Webster has had many "Ovations."

\* See Connecticut Whig Address and papers *passim*.

It has been his singular fortune to achieve his greatest successes when they would redound to the credit of others and only remotely to his own advancement. His demolition of nullification swelled General Jackson's fame\*—his singular exertion in Congress and before the people during the last four years, conspired to raise General Harrison to the Presidency, and his present powerful efforts to hold together the Whig party will all promote the advancement of Mr. Clay, while the lustre of his conduct of the affairs of State, will adorn the administration of President Tyler, a man for whom he probably never much cared. His position, however, is safe—safe in contemporary history, and safe for "the next ages." Should he withdraw from public life, having accomplished nothing beyond his past achievements, their lustre has spread far and wide enough to illumine his path to its end. Discharged from that warfare, in which with much glory he has taken some scars, he shall be no political Belisarius to beg for the suffrages of the populace, but retire upon a wealth of rich memories, upon revenues of golden opinions. Such remarks as we had to make concerning the supposed coalition between the President and Mr. Webster we reserve for a future paper on "Mr. Tyler's Position."

E.

\* General Jackson's admission that Mr. Webster had saved the Government has but recently transpired.

## MR. TYLER AND THE WHIG PARTY\*

To define and illustrate the relations held by the two great leaders of the Whig party to the important movements in the political world, was a task requiring no very shrewd sagacity. Their proportions were colossal; their attitudes were bold and statuesque; and they presented themselves to the observer in no doubtful light. The intellectual supremacy of Daniel Webster, the lordly will of Henry Clay, impressed on every page of the political history of our country for the last twenty years, rendered only an occasional glance at other men, and at passing events, essential to the full development of their "positions." We reviewed them as we do the dissolved figures of heroes, naked of circumstances.

To perform the same service in the case of President Tyler, seemed a very different labor. Endowed by nature with no attributes of intellectual or moral power, in which we might discern a prefiguration of his high destiny—trained by no discipline of life to cope with those stormy elements in whose collision he is tossed—raised to his lofty station by a rare "conspiracy of fortuities," we look in vain through his previous career to read the law of his future conduct. To make a substantial personage on the field of politics, requires the array of *circumstances*, as much as the common men in the streets require the aid of dress. *Their* identity is their *garb*, and *he* needs most ample drapery to make him a presentable figure before the public.

Whether for his own or for his nation's sins, Mr. Tyler was forced from the obscurity of private life into the position of trust and power which he now occupies, we do not

\* An article appearing in "The New World" October 16, 1841. A reference to the circumstances in which the article was written may be found in the general introduction to this collection.

propose to determine. The *fact* we consider equally unfortunate for both. In the quiet exercise of his profession as a lawyer, he doubtless may have secured the confidence of the community in which he lived, though we imagine that as an advocate in causes of much magnitude, requiring a nice perception of principles, or a clear assertion of them, he can never have been much sought after. The dignity of his manners, the purity and integrity of his personal morals, would suffice to make him a good citizen in his relation to the state and to the society in which he moved, yet this same *wrong-headed conscience* exhibited in his public life, would be apt to mar the practical value of his influence in any scheme of local or general benevolence, and make him one of that large class of men who, with the best intentions, are always doing some social mischief.

An active conscience, uninformed by sound wisdom, tenacity of his purposes, without discretion in the formation of them, a religious self-respect, verging upon contempt for others, were the prominent qualities which Mr. Tyler brought to the administration of public affairs. We can hardly conceive a more unfortunate conformation for a statesman *in power*. *In opposition*, the good ingredients of such a character would be more effective, the ill less pernicious. In *positive action*, sturdy resolution as likely in a wrong as in a right direction, a narrow scope in the planning of measures, and a perverse adherence to preconceived opinions, are the best results which could be expected from qualities so ill-adjusted.

In surveying whatever public acts of Mr. Tyler have survived in our memory, we find something of these features. Even those most worthy in the eyes of his friends, displaying to the best advantage the peculiar traits of his character, and challenging, if any of his acts can, the respect and admiration of his countrymen, betray a lack of symmetry, a *shortcoming*, which disturb, if they do not destroy, their

full effect. These acts too have been performed in conjunctures, where the conduct of really great men has furnished a ready and most unfortunate contrast to that of Mr. Tyler. When, rather than yield his conscience to the mandate of the State of Virginia, and further the perpetration of an act savoring equally of servility and tyranny, he flings at the feet of his constituents the power and dignity of his senatorial station, his party applaud him and his friends admire. But the nobler course of his eminent colleague, under the precise circumstances, so checks the applause and diverts the admiration to himself. With integrity no less stern, with pride no less unyielding, but with a juster estimate of his own position, with sounder views of that fragment of government in which himself and the great State of Virginia formed equally a part, Mr. Leigh signified his intention neither to obey the usurping instruction, nor betray the trust confided to him, by resigning it in the hour of peril. Thus also Mr. Tyler's recent exercise of the veto power, in defiance equally of fierce threats and softest persuasion, at the sacrifice of the favor of the dominant party most dear to him, and winning only the applause of its opponents most odious to him, exhibits certainly much nerve, and seems at first sight deserving of sincere respect. But the remembrance of the illustrious example of Mr. Madison, soon dispels such sentiment. We instantly feel how much more worthily the latter demeaned himself under the same trying circumstances—how the same honesty of conscience, united with a more sagacious mind, and informed by a wider experience, might have solved the difficulties of Mr. Tyler's position, and enabled him to present to the world a renowned instance of the magnanimous subjection of private opinions and wishes to constitutional duty.

The same inherent weakness in Mr. Tyler's character has most disastrously manifested itself through the whole brief period of his Chief-Magistracy. Pluming himself upon his



straightforwardness, ambiguity, almost to dissimulation, has marked every one of his state papers; trenching himself behind the sanctity of conscience, he is deemed by many to have violated the true sense of his inauguration oath; his boast of fidelity to his official trust has seemed only an excuse for treachery to his party. If the management of these vetoes was intended for an example of political heroism, most sadly was it conceived, most sadly executed. Stimulated by an agony of desire to preserve his consistency, it results in a most miserable vacillation—

Quod petit spernit; repetit quod nuper omisit,  
*Aestuat et vitæ disconvenit ordine toto.*

So much for Mr. Tyler *per se*—his relations to the Whig party are worthy of a more serious examination.

When the Whigs placed Mr. Tyler upon their National ticket, they did it in the blindest folly; for his has never been a *non-committal* policy—no skillful tissue of fraud was woven to ensnare their suffrages, no powerful eloquence exerted to beguile their judgment. The disappointment of the sportsman who has bought a horse with spavined limbs, which is distanced in the first heat, finds no sympathy either in the law or in the hands of the spectators. Mr. Tyler's state-rights principles, and his Virginia notions generally, were *patent* defects in him as a Whig Executive, and many men predicted that in the political race he would prove only a *quarter-nag*, if he did not (as he has done) *bolt* and throw his rider. The honest energy of his opposition to the Jackson and Van Buren dynasty was his sole claim to Whig support, and their adoption of him is one more instance of the short-sighted views of the *availability* party. In every aspect of the case this *bitter* truth they must admit, and it is the consciousness of this truth, which adds hot instance to their fiercest denunciations.

There is another opinion, which, if its truth be recognized,

will aid us much in determining the mutual relations of Mr. Tyler and the Whig party, and in solving any doubts which may exist as to the true course toward him to be pursued. It is, that Mr. Tyler's exercise of the veto power to crush the darling project of the party, is an *independent* act, standing *alone*. It is no part of a system—it is to be referred back to no political *cause*, it reaches forward to no ulterior measures. It is not the initiation of any scheme to secure his personal aggrandizement, or assist the triumph of his peculiar constitutional doctrines. It *flowed* only from his singular mental and moral structure—it *ends* in the attainment of its immediate object, the denial of a bank.

In the light of these two postulates, whatever of mystery has enveloped Mr. Tyler's *predicament* seems to vanish. As soon as we satisfy ourselves with looking at the simple narrative of *facts*, which in the last six months have transpired, without giving to *conjecture* respecting them the credit of history, or to mere *surmise* the force of prophecy, the whole case lies in a nutshell. Mr. Tyler differs from the Whig Party on the subject of a Bank, and elects to exert whatever power the constitution confers upon him, to prevent any legislative action discordant with his views. This repugnance is composed of two ingredients. A bank is odious to him intrinsically, because *necessarily* the organ and instrument of political corruption and profligacy—it is also irreconcilable with his *states-rights* doctrines. In aversion to corruption and profligacy, the Whig party will not confess themselves a whit behind Mr. Tyler—they only regret that he should have thought it his duty to stigmatize their favorite measure by such harsh epithets. In the matter of states-rights, Mr. Tyler is fundamentally at variance with the great majority, both in weight and number, of the Whig politicians. In reference to this great line, which, more than any other political denunciation, from the foundation of the government to this day has divided the antagonistic parties

—Federalists and Democrats, Republicans and Jackson men, Whigs and Locofocos—they, apparently, more to their surprise than delight, find themselves upon opposite sides. Upon whatever future measures, then, shall lie within the regions traversed by this line, Mr. Tyler and the Whig party can never agree. In all which are remote from this region, for aught that appears, they *might* cordially concur.

Concerning the acts and demonstrations of the two parties in this quarrel since the rupture between them, we have but a few remarks to make. During the six weeks which have elapsed since the last veto, movements decisive and significant have followed one another with singular rapidity.

Each following day  
Became the next day's master, till the last  
Made former wonders, its.

To the student of contemporary politics this brief period has been crowded with practical instruction. On the one side the tone of the veto message, Mr. Webster's continuance in place, the New England state addresses, Mr. Cushing's letter, and the construction of the new cabinet, are the most noticeable matters. On the other, the harangue of the Congressional caucus, the secession of the retiring Secretaries, Mr. Clay's attack upon the veto power, the New York State declaration, and the result of the current elections, most attract our attention.

The concluding paragraphs of Mr. Tyler's last message urge the preservation of concord in a manner, most undignified to be sure, but earnest and sincere. They deprecate a severance of the political ties which had united them with the dominant party in a style of ungraceful but honest expostulation. They express not only a thorough desire, but a sturdy determination to act in unison with that party which raised him to power, in opposition to that party whose reign he did his utmost to overthrow. The first response

that he received to these friendly overtures, was the scornful resignation of the seals of office by five out of six of his cabinet, followed by the stern denunciation of the *entire* Whig Congress. The astounding effect of the first of these occurrences was much mitigated by the retention of his post by the Secretary of State, the greatest and the best *Whig* among the constitutional advisers bequeathed to the President by his predecessor; and this effect was soon entirely neutralized by the ready acceptance of office by men, who in ability, in popularity, in devotion to Whig principles, and in the regard of that party, were, for the most part, in no degree inferior to those whose places they assumed. The force of the caucus address, at first sight conclusive of reconciliation, was broken by the authoritative announcement that the meeting which adopted it, included scarce a third part of the Whigs in Congress, and it was left to future demonstrations in the particular states to determine how extensive an approval such sentiments would procure. How wide a sympathy in this section of the country the hasty and heated views of that production have met with, the quiet disregard of them shown in the Connecticut and Massachusetts addresses, and the subdued tone in which they are echoed in the New York "Declaration" sufficiently indicate. If these were the only symptoms to be regarded, the wounds would seem healing at the first intention.

In the West and the South, where Henry Clay is lord of the ascendant, the political horizon looks ominously dark, and from its gloom there emanate sounds portentous of evil. This great statesman, tantalized so often in his grasp at power, seems driven almost to desperation by this last disappointment. In a premature defiance of future opposition he hides his chagrin at present defeat. Taught by declining years that his last contest for the Presidency now awaits him, he fears, in every political combination not of his own forming, a conspiracy against his right of succession.

No half way measures content him. As if it were not enough to contend with the powerful and well-disciplined opposition party, as if with the entire Whig strength this were not an equal struggle, he proposes to commence the battle with disaffection in his own party, and by throwing away all the immense resources of influence which the possession of place and patronage confer upon a party. In *Mr. Clay*, regarded as his choice of evils, this may be prudent and politic—in the *Whig party never*. Whether as decisive demonstrations, from the Southern and Western states, will favor the movements of dissent and separation, as, from the Northern and Eastern, have sustained the opposite course, we anxiously wait to discover.

We have, then, two sections of the administration party, more or less distinctly marked, holding toward the President the attitudes, one of denunciation and defiance, the other of forbearance and conciliation. Whether these opposite inclinations shall be pushed to their extremes of active *antagonism* or complete *coalition*, and the party, thus severed into two portions never to be re-united, the progress of events alone can determine. To us, a middle course seems clearly most politic, and, from present appearances, most probable. The dictates of a patriotic devotion to Whig principles, looking more to the good of the country as depending upon *their* predominance in the *government*, than to the elevation of one man or another to the *Presidency*, would seem to enjoin a compromise before it becomes too late. Risk not the fate of the contest upon a wager of battle between any *two* men; let not the triumph or defeat of the whole party rest upon the issue of a brilliant passage of arms between two rival leaders. Let Mr. Clay pause in his violent career, and with one more effort of that magnanimity which, through his long public life has been so conspicuous, resolve

—nec ultra  
Errorem foves,



and return to ground broad enough for the *whole* Whig party to stand upon. Let Mr. Webster yield no inch from that position, where as Secretary, "he stood *alone*,"

By his own weight made steadfast and immovable, and which the whole Whig party will hasten to occupy with him. Let all the vast advantages of patronage and place be preserved as entire as may be, and exerted with unbroken vigor. Let not *inertia* of administration be thrown away, without gaining the *momentum* of opposition.

E.

## II

### SPEECH AT THE UNION MEETING IN CASTLE GARDEN, NEW YORK, OCTOBER 30, 1850— THE FUGITIVE SLAVE LAW

#### NOTE

The "Compromise Measures" of 1850, as every reader of United States History knows, contained provisions by which the Fugitive Slave Law, which had been on the statute books since 1793 and had been enacted in conformity with and in support of, a Constitutional obligation, was, by amendment, rendered more effective in its operation in the interest of the Southern slave owners and was made to bear with greater severity upon the escaping slaves. These amendments to the law formed a part and an important part of the concessions to Southern demands that entered into the "compromise" between the two sections of the country. The harsh provisions of the law as so amended, which gave every summary remedy for the return and left but small chance for the escape of runaway slaves, aroused the moral indignation of the North and particularly of New England. On October 30, 1850, a great "Union" Mass Meeting in support of the measures was held in "Castle Garden," New York. The building is now occupied by the New York Zoölogical Society as an aquarium, and was then one of the larger buildings for popular assemblies. The meeting was called to order by Mr. Nicholas Dean. Mr. George Wood, an eminent lawyer of New York, presided and the following speakers addressed the meeting:—Messrs. James W. Gerard, Edward Sanford, James T. Brady, Charles O'Connor and Ogden Hoffman, all distinguished lawyers of that time. Mr. Evarts, being then under thirty-three years old, was the last speaker. The speech that follows is his first recorded public address before a popular assembly and it may be added that it was the only occasion when Mr. O'Connor and he spoke from the same political platform.

## SPEECH

Among the measures, Sir, of the late session of Congress, a session more important, perhaps, than any other since the formation of the government, was one which purports to provide legal enactments in pursuance of, and for the better execution of, a specific obligation imposed by the Federal Constitution. It is of this law, the Fugitive Slave Law, that I propose to speak, and I shall attempt to exhibit for your intelligent consideration and dispassionate judgment, the true character of its most important provisions, in their relation to the sacred compact on which the whole fabric of our government rests, and to the sound principles of jurisprudence, which should mark the laws of every nation, and most of all, those of a nation of freemen.

In approaching this discussion, Sir, I have not had the advantage of meeting with anything which could be called an *argument* against the validity of the law or the propriety of its enactments. It seems, thus far, to have answered the purposes of the opponents of the law in their public examinations of the subject which have fallen under my notice, to call the Southern claimants, availing of its provisions, slave catchers; the Northern judges, Commissioners and Marshals, who, in their respective functions, have had occasion to discharge official duty under it, kidnappers and slave hunters, and to execrate its whole process and procedure as violent and oppressive, and its sanctions as cruel. Discussions, in such a tone and temper, scarcely arrest my attention, much less attract my confidence.

I infer, and am warranted to infer, either that such reasoners do not understand the subject they profess to treat, or that they do not desire or design to shed light upon it; that they are contending not for practical ends and the advancement of the right, but to embitter strifes and aggravate dissensions.

We are, gentlemen, confirmed in this view of the real

motives and objects of these malcontents, by the consideration, that of all the great measures of the late Congress which your resolutions approve, the Fugitive Slave Law is the only one which is not either entirely satisfactory to the North, or in its character not capable of disturbance; the capital for agitation being thus reduced, a more active business must be carried on to produce the same profitable returns.

The Convention which framed the Constitution of these United States was composed of the wisest and best of men; in their deliberations and final conclusions upon some of the most important provisions of that instrument, it is known that marked diversities of opinion prevailed, but in this great council in which Washington presided, and the patriotic statesmen of the North and South bore equal part, this clause in substance, was unanimously adopted:

No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

I ask you, gentlemen, is there any point defective or imperfect in this obligation or in the manner of its creation? Did force compel or fraud procure from the Northern delegates unmanly or ignoble concessions?

No, the obligation is perfect, and for the common good received the free, intelligent and honest assent of all the parties to the great compact of our nationality.

Congress, very soon after the formation of the government, passed a law for the execution of this clause of the Constitution, and the act of 1793 has remained in force as the sole legislation on the subject until the enactment of the present law, in amendment of and supplement to its provisions.

It is said that the privilege of *habeas corpus*, secured by

the Constitution of the United States, is infringed by the provisions of the new act. If this be so, such provisions are void, and no repeal or agitation is required to annul them; the judgment of the Supreme Court will set that matter right. But this writ is not in terms denied by the act, and while the fundamental legislation of Congress has provided that the writ shall issue in all cases of confinement under any law of the United States, or any order, process, or decree of any of its judges or courts, "anything in any act of Congress to the contrary notwithstanding," there is no reason to fear that any court will hold the writ to be denied by implication. To be sure, the writ of *habeas corpus* being framed only for the enlargement of persons restrained of liberty contrary to, or without authority of law, if the certificate under the Fugitive Slave Law be lawful warrant of confinement, the *habeas corpus* will not operate the discharge of the party from custody; if it be not such lawful warrant, then upon the writ of *habeas corpus* the prisoner will be liberated; and thus this important writ will discharge its appropriate function as quietly, as effectually, and upon the same rules of law, as in ordinary cases. The only denial of the writ of *habeas corpus* to the fugitive slave is to be found in a statute passed, not at Washington and with the participation of Southern influence, but at Albany, by our own legislature. This law provides, that persons detained under process of any court or judge of the United States, in case of their exclusive jurisdiction, *shall not be entitled* to a writ of *habeas corpus*; that every petition for the writ shall exclude this as the cause of detention complained of; that if this cause of detention appear on the hearing, the State magistrate shall at once remand the prisoner, and that such magistrate shall not inquire into the *justice or legality* of any such process. Now, the Supreme Court of the United States having held, that legislation under this clause of the Constitution is exclusively in Congress,



it follows that every person restrained of liberty by process of a judge or court of the United States, under the late act of Congress, is denied the writ of *habeas corpus* by our own statute. This law of the State is not to be complained of; it proceeds upon the ground of avoiding a conflict of jurisdictions, and I bring it to your notice for the purpose of showing that some careful discrimination is necessary to understand when a denial of this great writ in favor of liberty is, or is not, at variance with sound principles.

Another objection made to the law is, that it does not provide, or, as it is more commonly stated, that it *abolishes*, the trial by jury of the issue between the claimant and the alleged fugitive from labor. It is urged, that this is a departure from the fundamental principles of our jurisprudence, which gives this trial of the matter of fact involved in every private suit and public prosecution.

It might be sufficient, Sir, in answer to this objection, to say, that the right to a trial by jury is not given by the act of 1793, and that, previous to the year 1840, the statute of our own State, respecting the surrender of fugitives from labor, provided for the hearing and determination of the facts, by affidavit or oral proof, before the State magistrate, without a jury. In the year 1840, a statute was passed in this State giving the trial by jury on the hearing before the State magistrate, and we might suppose that it was with an honest purpose of protecting freemen against unfounded claims for their surrender, had not the last section provided, "that this act shall not be so construed as to apply to the relation of *master* and *apprentice* which may exist in any other State." The only valuable purpose of a trial by jury, in any case, gentlemen, is for the better ascertainment of the facts in dispute; the facts in the case of a controversy between master and apprentice are, in their nature, as numerous and as difficult, at least, as between master and slave; and what shall we think of the legislation which

gives this form of trial in the one case and denies it in the other? What but this—that the anxiety to protect the liberty of freemen is insincere, and the statute was framed to evade the fair fulfilment of the constitutional obligation.

The act of Congress makes no such distinction; it gives the same law, and prescribes the same administration of law, for the bond and the free, for the slave and the apprentice.

In any aspect of the matter, gentlemen, I put it to your candid judgment, whether the absence of the trial by jury, in the procedure under the new act, can be imputed as an *innovation*, when the act of 1793 equally excluded it; or as an *oppression*, when the legislation of our own State, until the year 1840, allowed the determination of the same questions by a magistrate without a jury.

So much is said on this point of trial by jury, Sir, that it may be worth our while to look a little further into the true nature of this right, so habitually and so justly valued by our citizens. It is *not a natural right*; it is a positive and artificial institution, the growth of English liberty, from which people we have inherited, and some other nations have adopted it. Generally, perhaps universally, its privilege applies to the decision of the principal and substantive issue in controversy, and not to the determination of matters, however vital in their nature, preliminary or introductory to the main trial. Thus, in civil cases, property is taken, or the person is arrested, in criminal prosecutions, the accused is seized and thrown into prison without any trial by jury; and though these summary proceedings operate for the time, and often for a long time, as a practical adjudication of the question of property or of liberty, no one complains of it as an encroachment upon the right of trial by jury.

We all know and understand that these processes are necessary to bring and retain the subject-matter of dispute,

whether of a civil or criminal nature, before the appointed tribunal, to await the verdict of a jury in the due progress of the cause, to the end that such verdict may have some practical and valuable operation. Now, the whole theory upon which the act of 1793, the present act of Congress, and the State proceedings (until recently) in the matter of fugitives from labor have been framed, has been, that, under the constitutional provision, the claimant was entitled to process within the State to which the fugitive had fled, to restore him to the State from which he had escaped, there to abide the full determination of the right between them; and further, that this process was of the character *preliminary* or *introductory* to the substantive trial of right to which I have alluded. Thus, Judge Story, in his "Commentaries on the Constitution," says that the clause under consideration "obviously contemplates summary ministerial proceedings," and requires "only *prima facie* proofs of ownership."

I have said, Sir, that this is the theory of the Fugitive Slave Acts; it seems to me to be the sound construction of the constitutional clause; the very occasion for any provision in the premises was that different laws and different notions prevailed, on this subject of slavery, in the two sections of the country, and the very object of the actual provision, and the very pith of its language, are to subtract the determination of the right of the master to his slave from the laws and tribunals of the State of refuge, where the general doctrines of jurisprudence would place it, and by a special and exceptional provision to retain the jurisdiction under the laws and before the tribunals of the State whence the fugitive fled, restoring him thither to abide their judgment.

Regarding the Fugitive Slave Law and the procedure under it in this light, we shall find all their alleged inconsistencies with the general course of judicial investigation

concerning the rights of persons or property, resolve themselves into this separation of the jurisdiction of trial from the jurisdiction of first process, a separation not peculiar to this act nor to the constitutional clause from which it springs. In the jurisprudence of the United States there are, Sir, four cases in which this principle prevails, two arising under the Constitution, and two under treaties with foreign powers; and of these two divisions one case only under each implies any *accusation* even of crime, against the parties affected by it, the other is for the enforcement of merely civil right. The cases under the Constitution, as you will readily understand, are the delivery from one State to another of persons charged with crime, and this very matter of fugitives from labor; the cases under treaties with foreign powers are the extradition of persons charged abroad with crime there committed, and the surrender of seamen deserting from foreign vessels in violation of a simple contract of hire. The delivery of fugitives from justice from one State to another, and the extradition of foreign criminals are subjects familiar to us all; that the claim, in either case, is made upon *ex parte* proof taken out of our own State—that the arrest is summary, and that neither upon *habeas corpus* nor through a trial by jury, can the fact of guilt or innocence be inquired into according to our own laws or before our own tribunals—and that obedience to the claim is yielded, not in pursuance of general principles of law (with which it is at variance), but in fulfilment of special obligations thereto imposed by the Constitution in the one case, and by the treaty in the other; all this, I say, we know and understand, and no man questions the procedure as unjust and improper. The analogy which these cases bear to the surrender of fugitives from labor must strike everyone, and the only objection to its completeness ever urged, is that the notion of *crime* enters into both the cases to which I have referred—an objection of little weight when we consider that it is not a *convict*, but

an *accused* person, whom *our law presumes to be innocent*, that we are called upon to send away for trial under foreign laws and before foreign tribunals.

But, gentlemen, the surrender of deserting seamen under our treaty stipulations with foreign powers, must be admitted to present a perfect illustration of the true character of the procedure under the Fugitive Slave Law. It has for many years been the policy of our government to insert in its commercial treaties with foreign nations reciprocal engagements for the forcible arrest and surrender of deserters from the private and public vessels of either contracting party. The consuls of each nation, by these treaties, are clothed with authority to require the arrest, detention, and imprisonment of such deserters, and to apply to the tribunals of the country where such desertion shall occur, to enforce this right; upon simple claim not under oath, and the production of the ship's roll or other authentic document, showing that the persons claimed formed a part of the crew, it is provided that "*the surrender shall not be refused*," and that the public prisons of the country may be used for their confinement, until their actual deportation.

For the execution of these treaty stipulations, Congress has by law provided that upon claim thus made and substantiated, it shall be the duty of any court, judge, justice, or magistrate applied to for the purpose, to issue a warrant to arrest the persons claimed for examination. Upon this examination the only points of inquiry are, do the persons claimed belong to the crew of the vessel with deserting from which they are charged (and of this the crew list or ship's roll is made sufficient evidence), and further have they left the vessel without the consent of the master, and thus placed themselves within the terms of the treaty stipulation for their surrender. These facts once established upon this summary inquiry, without any trial by jury, and securely against the operation of the writ of *habeas corpus*, the desert-



ing seamen are lodged in prison, forcibly restored to the power of the ship-master from whose service they had escaped, and carried from our shores.

Nothing, gentlemen, could be less in accordance with the whole spirit and tenor of our general law than this procedure. The relation of master and seaman is one of contract of service for hire, and stands upon no other footing in the eye of the law, than that of the mechanic and his journeyman or the merchant and his clerk. For a breach of these contracts our laws allow no other remedy than of pecuniary damages pursued through the ordinary forms of suit, the trial by jury included. No process of arrest, no summary inquiry, no compulsory restoration to service, is tolerated by our law. Why, then, has the act of Congress established this peculiar procedure in the case of foreign seamen? Because the government has contracted treaty engagements with the foreign nation, of which this is the simple and necessary fulfilment. Why has our government bound itself by treaty to the establishment of this peculiar procedure thus at variance with the spirit and tenor of our general law? Doubtless, Sir, not from any predilection for such procedure in itself, but for the general benefits to the contracting parties which the entire treaty secures, and among which in the contemplation of both parties is the reservation by each within its own jurisdiction of the trial and decision of all contracts of maritime service between masters and mariners.

Practically, Sir, this peculiar law has no inconsiderable operation in infringement of personal liberty among the class made subject to its provisions. Probably not far from a hundred seamen, in this port alone, are annually affected by its coercion. Yet we hear of no violent objection to, nor even harsh criticism upon, this law. It is obvious to everyone that the proper point of attack, if any attack is to be made, is not upon the law, but upon the treaty stipulation which has made the law necessary, and that good

faith and common honesty require a withdrawal from the entire benefits of the treaty if we are not disposed fairly to fulfil this particular stipulation, part and parcel of it.

So, too, the Fugitive Slave Act finds its place in our statute book, not from any present motive of complacency in its purpose and effect in themselves considered, but as a necessary fulfilment of the antecedent obligation imposed by the Constitution; and shall not the same good faith and common honesty which bind us to the full observance of foreign treaties, with equal force compel a complete obedience to this fundamental compact by which alone we exist as one people?

The objection that the late Fugitive Slave Act is *ex post facto* and therefore unconstitutional and oppressive, finds little support from an examination of its provisions. Waving the point, that the phrase *ex post facto* is applicable only to criminal statutes, as too technical, we may say of the act in question without fear of contradiction, that it neither makes that slavery which was not so before, nor subjects any man to that condition not so subject before, nor impairs at all the quantity or quality of proof before requisite to establish the existence of the relation of master and slave. Indeed it is worthy of notice that the 10th section, which introduces the only material change in the matter of proof, applies only to cases of escape, subsequent to the passage of the act. It is true that the procedure of the new act is intended to be more efficient towards its object than the previous law has been, but an objection to it as *ex post facto* on that ground would be as reasonable as the complaint of a criminal that a law was *ex post facto* which after the commission of his crime should increase the number of the police, thus diminishing his chances of escape, or enlarge the judicial force of the tribunals having cognizance of the case, thus accelerating the approach of his trial.

But it is further said that this act does not provide suffi-

cient guaranties for freemen in protection of their liberty. Gentlemen, the whole body of our jurisprudence in reference to personal rights, is not to be found in this single act; it authorizes the application of its procedure only to *persons held to service or labor*, and whoever shall by its process or without its process attack the liberty of any man, of whatever complexion, not subject to that condition, is liable to criminal prosecution or to civil suit as the case may be. In a word, every citizen is protected by law against oppression or imprisonment under this act, in the same manner and to the same extent as against the same danger in any other quarter, and he needs no more complete or more certain protection.

I have thus, Sir,—not, I trust, without a due sense of the responsibility which should attend every effort to affect public opinion on a matter of serious public concern—presented the main features of this act in connection with the constitutional clause to which it owes its origin, and under such analogies with the jurisprudence of the United States as have seemed to me appropriate to its illustration. I have endeavored to show that it does not subvert nor attempt to subvert any established principles of liberty or of law, except in so far as the recognition of slavery may be deemed at variance with such principles, and that in this respect the law is what it is in accordance with, and in obedience to, the constitutional obligation. Of the details of the bill, the plenary powers of the commissioners, the adjustment of fees and the particular forms and authentication of proof, I shall speak no further, than to say, that I am unable to perceive that by any provision, or from any omission, this act threatens the remotest danger to any person not truly subject to the condition of the slave or apprentice. If these details be in any respect unwise, injudicious or unconstitutional, and such defects prove of any practical importance, they can be and will be corrected. They do not touch the

popular mind and furnish no basis for excitement or agitation. It is only from a popular impression that the act is a violent and tyrannical prostration of the usual safeguards of liberty, and that its operation to that effect is above judicial and constitutional control, that any considerable resistance to its authority can be feared; a correct understanding of its provisions must remove such an impression even from minds the most prejudiced. A little sober consideration will satisfy those who express and honestly feel a repugnance to this statute, that the real point of their dissatisfaction is with slavery itself, and the constitutional provision for the surrender of fugitives who have escaped from its hard condition.

Of forcible resistance, Sir, to the execution of this law, exhibited or threatened, but few words are needed to place it, and the promoters of it, of whatever garb or guise, in a proper light before the community. The supremacy, absolute and universal, of the law, is an essential notion of every organized community, and he who doubts this supremacy strikes at the foundation of society. It is the pride and happiness of free communities, that their law is established by the expression of the public sentiment and public will through the authentic forms of legislation, and is construed and administered by tribunals emanating from the same original source of authority, but constituted permanent and independent. Such is our fortunate condition. When in such a community, an individual claims for his *private conscience* the right of *veto* on the public legislation, or appellate jurisdiction over the supreme judicial tribunals, he simply denies the rightful existence of *society*, and asserts that the complete natural independence of the individual is the only lawful condition of man. With such tenets society can hold no argument, and when they lead to overt and violent resistance to the law of the community, the actors in such resistance become and are treated as *outlaws* and enemies

of the State. The right of martyrdom under the law, and the right of revolution to change the sources of the law, are the only rights which reason, morals or religion can suggest against an iniquitous system or administration of law. How much of the devotion of the martyr, or the heroism of the patriot, the agitators of our day exhibit, you, gentlemen, can judge as well as I, and how little anything in the system or the administration of our government can justify or excuse rebellion against it, let the freedom, security and happiness which prevails throughout our borders bear grateful witness.

Let us, then, be misled from the plain path of duty by no idle clamor, by no specious sophistry; let us know and feel that he who strikes at *a* law, strikes at *the* law; that he who violates or avoids the obligation of one clause of the Constitution, is faithless to that great charter of our national government, and to the Union of these States, which exists by and under it, and by and under it alone; above all, let no one who loves his country—who reveres the memory of his fathers—who hopes for the happiness of his children—ever doubt or ever forget that as we the citizens of this great republic, acknowledge no superior, and bow to no master but the law, so have we no guardian of our rights, no protector of our liberties, but the law, and that every wound to its *authority*, as surely enfeebles its *protection*.

In the actual aspect of public affairs, sir, the duty of every good citizen is clear. While the enemies of public order and security, whether at the North or at the South, labor to irritate one portion of the nation against the other—to aggravate and inflame differences of feeling and opinion—to estrange from each other men born of one blood and of one country—be it our care to emulate the noble spirit of our common ancestry, who bound us together as one people, free, independent, powerful; let the line be fairly drawn between the foes of public order, the laws and the Constitu-



tion—and whatever others may do, let us see to it, that in our breasts the love of country shall reign predominant, and that neither the cold selfishness of politics shall quench, nor the fickle flame of fanaticism shall supplant, its sacred fire.

### III

## ADDRESS TO THE PEOPLE OF THE UNITED STATES. ADVOCATING THE NOMINATION OF DANIEL WEBSTER TO THE PRESIDENCY

### NOTE

Preliminary to the Whig Convention which met at Baltimore in June, 1852, efforts were made by the friends and supporters of Mr. Webster throughout the country to influence public sentiment in favor of his candidacy as the nominee of that convention for the presidency. In the autumn of 1851 a mass meeting was called in Boston to meet in Faneuil Hall with this purpose in view, at which there was presented for adoption an address to the people of the United States that had been prepared by Edward Everett. Following upon this a similar meeting was held at Metropolitan Hall, New York, on March 5, 1852, which was attended by a very large and enthusiastic audience. Mr. Evarts, always a devoted admirer of Mr. Webster, was actively engaged in this movement in his behalf and, as a member of the committee appointed for the purpose, prepared the address to the people of the United States, that follows, which he read and presented to the meeting for its adoption. It was afterwards widely published in the press of that day.

### ADDRESS

*To the People of the United States:*

The next approach of the election for the Chief Magistracy of the Union, calls upon all its citizens to consider the actual aspect of public affairs, to examine the characters and principles of the leading statesmen of the nation, and to determine, upon a deliberate and patriotic survey of all the vast interests of this great Republic, to whom the administration of these affairs and interests should be entrusted. If we justly deem it a chief glory of our system of government that its powers are to be exercised by no fortuitous allotment

of birth or rank, but by the free designation of popular choice, it is a necessary consequence that that choice can be wisely exercised only in favor of the most worthy and the most capable. Just as fully as we estimate the value and dignity of the Right of Suffrage, we must admit the solemn obligations of *duty* which attend its enjoyment, and neither by apathy nor by rashness in the exercise of the elective franchise, neglect or abuse the liberty which distinguishes our condition from that of every other people.

Nor is it less the privilege and duty of every citizen both to impart to others the grounds of his own opinions and preferences on this subject of the highest concern to all, and to receive theirs from them, for thus only can the concurrent sense of those who view alike the interests of their common country, be ascertained and applied to the practical results of an election.

But, fellow citizens, if these sentiments in their general application receive our assent, we can scarcely exaggerate the peculiar importance, in the actual condition of public affairs and of political parties, of their earnest adoption as practical rules for our action, in preparing for and conducting the ensuing Presidential Election.

No reflecting mind can refuse to admit that the probable duties, difficulties and dangers which will attend the Administration of the Federal Government during the next Presidential Term, require that the reins of power should be held by a firm hand, and guided with a wise experience of the past and a sagacious forecast of the future. If the revolutionary war and the labors of the Convention of 1787 gave a new Constitution and Government to the established communities of the old States, recent public events have brought a vast region of new territory and new interests within the dominion of our existing Constitution and Government. If our entrance as an independent nation into relations with the other nations of the earth followed from the first organ-

ization of our Government, our wonderful growth in territory, population, wealth, and power, concurring with the stupendous changes wrought by science and invention in the means of intercommunication with the old world, has commenced a new era in our foreign relations. If contemporaneously with our birth as a nation, all Europe became involved in the storms of war and revolution, and our humble and remote position scarcely preserved us from being drawn into the strife, the preparations for greater conflicts there, warn us of a peril to which our relations as a great commercial and maritime nation now most certainly expose us. And if the President of the United States was called upon to apply all the resources of his wisdom and patriotism to direct and control the first operations of the new Constitution and Government upon the States over which they were established, and to define and regulate our position and intercourse with foreign nations in their then disturbed condition, who can deny that the next Chief Magistrate of the Union will require, for the successful conduct of our affairs, whether foreign or domestic, the largest measure of the same great qualities?

Under the influence of these sentiments, fellow-citizens, at a public meeting, whether for numbers, or the universal representation of the various interests of our Community, never surpassed, held this day in the City of New York, it was resolved to announce, as our unanimous choice, and to submit to the consideration of the National Convention, the name of DANIEL WEBSTER as a Candidate for the Presidency of the United States, at the next election.

The character and career of Mr. WEBSTER, his principles, his abilities, his public services, his labors and his fame, the honors which he has received from his countrymen, and the renown to his country which he has imparted in return, are known to you all. Born in the ordinary condition of American life, the son of a soldier of the Revolution, educated entirely

in the schools and colleges of his native State, rising by his own exertions to the height of his profession in the country, he rejected the splendid emoluments which an exclusive devotion to private pursuits ensured to him, and, at an early manhood, entered the councils of the nation; for more than a third of a century, with trifling intervals, he has been in public life, as the immediate representative of the people, as Senator, and as Secretary of State; during all this time, his acts and his speeches have been seen and read, known, understood and scrutinized by all his countrymen all over the land.

He is known on the seaboard from the St. Johns to the Rio Grande, and from the Columbia to the Gulf of California, by every seaman and by every merchant, as having achieved, by the power of his reason, what war had failed to accomplish, and established on a basis hereafter never to be questioned, the absolute exemption of the American flag, in whatever sea, from search or visitation, making the deck of every vessel as safe from foreign interference as a cabin behind the Alleghanies.

He is known throughout the vast interior to all engaged in internal trade and navigation, as the earnest and consistent opponent of that narrow construction of the Constitution which restricts its commercial protection and operation to *salt-water*, and denies them to our land-locked seas and mighty rivers.

He is known to the farmer, mechanic, and manufacturer, as the advocate of that system which defends, promotes, and encourages American labor, and develops and expands all American resources of production and manufacture, the supports of foreign commerce.

He is known at home and abroad for those great negotiations in our foreign affairs, which have composed strifes, averted wars, extended commerce, settled boundaries, repaired national injuries inflicted or sustained, and signalized our foreign relations by acts of mutual respect and comity, by acts of magnanimity and clemency.



But above all, fellow-citizens, he is known and cherished by every lover of his country, as the *Defender of the Constitution* and the *Advocate of the Union*; and whenever and wherever “we behold the gorgeous ensign of the Republic, now “known and honored throughout the earth, still full high “advanced, its arms and trophies streaming in their original “lustre, not a stripe erased or polluted, nor a single star “obscured, bearing for its motto, spread all over in characters “of living light, blazing in all its ample folds, as they float “over the sea and over the land, and in every wind under “the whole heavens, that sentiment, dear to every true “American heart, LIBERTY AND UNION, NOW AND FOREVER, “ONE AND INSEPARABLE.”,—whenever and wherever we behold this flag of our country, the name of DANIEL WEBSTER and his fame are to our eyes mingled with its blazonry.

This eminent citizen, instructed in every art, trained in every discipline, informed by every experience of public life, endowed with every power and furnished with every acquirement fit for the service of the State, his public virtue and patriotism, tried by every personal, partizan and sectional influence within the whole sphere of our politics, and ever found true to the whole country, and its permanent welfare, this eminent citizen, now in full maturity of years and wisdom, yet “his eyes not dimmed, nor his natural force abated,” we believe most worthy to receive the honors, most able to perform the duties, of President of the United States.

Nor, fellow citizens, is it a less serious topic for your consideration that JUSTICE, justice to Mr. WEBSTER and justice to our country, justice to the historical greatness of the past, and to the solemn claims of the future, requires the earnest and devoted labors of us all, to reward his past and command his future services for the Republic.

He has served the State from early manhood to the present hour, he has labored for and loved his country with an enthusiasm untiring and undecaying—his very heart and life,

as it were, have been wrought into the fabric of our prosperity and our glory; and at last he has crowned a long career of noble achievements for the general good with a sublime sacrifice of self to his sense of public duty, which has filled the measure of fame, and touched the *heart* of the whole people.

If, besides public talents, virtues, services, and great deserts, *popularity* be required for success in the political canvass, Mr. WEBSTER enjoys it with the people of the United States, to an unexampled degree.

He who denies this, either means by *popularity* something different from admiration, respect, attachment and gratitude, or he means by the *people* some nondescript portion of the community, distinct from the men who till the soil, and ply the loom, and crowd the mart, and navigate the ships, and fill the professions and all the manifold pursuits of industry and business. All *these*, whenever and wherever opportunity affords, in town or country, at the North or South, at the East or West, in the courts, in the Senate, in the popular assembly, seek every occasion to gaze upon his person, to listen to his eloquence, to grasp him by the hand, and attend his presence and his movements with every display of enthusiastic admiration and regard. Repeatedly a candidate for popular suffrage, he has always beaten his competitors; his elections to the Senate have always been, on the part of the Legislature, but a formal expression of the popular will of its constituents, and his place in the Cabinet, now and heretofore, has been accorded upon the well-defined and general expectation and desire of the great mass of the American people.

For twenty years the school boys of our land have rehearsed the eloquence of Daniel Webster, in the same breath with that of Fisher Ames and Patrick Henry, and have grown to manhood to find this classic of their school-books the living Orator, Patriot and Statesman,

Distrust then, fellow-citizens, these arrogant contemnners of an intelligent, educated, enlightened, generous people, whom they pronounce unable or unwilling to recognize the high deserts of Mr. WEBSTER, claiming only for *themselves* an honorable exception from such blindness and ingratitude!

For this, our own great State of New York, his frequent public receptions in this city, and his recent enthusiastic greeting, from town, village, and hamlet, throughout the length and breadth of the State, have sufficiently shown the sentiments of our people, and we fearlessly challenge for him the test of the general ballot, to vindicate the whole country from this aspersion on its intelligence and its patriotism.

In this crisis of our history, such is the man whom we propose for your suffrages, and such his qualifications to meet and fulfil its duties.—The issue of his acceptance or rejection by the people, is one which cannot be evaded; and all the vast consequences of welfare or misfortunes to the country, which depend upon the decision, rest with each citizen, according to the measure of his influence—over public opinions and public action. Let us then, fellow-citizens, so discharge our duty and our whole duty, to the country and to the whole country, that in the result of the approaching contest, we may with honest pride join our voices in the general joy which will attend success.

IV  
SPEECH AT THE BROADWAY TABERNACLE  
APRIL 29, 1856

NOTE

Among the public demonstrations that preceded the first Republican Convention for the nomination of candidates for President and Vice-President, which was held in Philadelphia June 17, 1856, one of the most important was the National Convention that met at Pittsburgh on Washington's Birthday of the same year. The organization of the Republican party had proceeded very nearly to completion and the Convention at Pittsburgh was called by the chairmen of the Republican State Committees of Maine, Vermont, Massachusetts, New York, Pennsylvania, Ohio, Michigan, Indiana and Wisconsin. Delegates from twenty-eight States and Territories, some four hundred in number met on the appointed day. The body was composed of earnest and zealous men opposed to the extension of slavery and was representative of all the best elements in the country. The Convention and its proceedings are thus described in Nicolay & Hay's "Life of Lincoln":—

"It was merely an informal mass convention; but many of the delegates were men of national character each of whose names was itself a sufficient credential. Above all, the members were cautious, moderate, conciliatory and unambitious to act beyond the requirements of the hour. They contented themselves with the usual parliamentary routine; appointed a committee on national organization; issued a call for a delegate convention; and adopted and put forth a stirring address to the country. Their resolutions were brief and formulated but four demands: the repeal of all laws which allow the introduction of slavery into territories once consecrated to freedom; resistance by constitutional means to slavery in any United States Territory; the immediate admission of Kansas as a free State, and the overthrow of the present national Administration."

New York had sent a large delegation to this Convention, and as

a sequel of its transactions a large mass meeting was held in New York City on the evening of April 29th at the Broadway Tabernacle. Mr. Evarts had prepared the call for the meeting which was as follows:—

“The Citizens of New York opposed to the measures and policy of the present National Administration for the Extension of Slavery over territory embraced within the compact of the “Missouri Compromise,” and in favor of repairing the mischiefs arising from the violation of good faith in its repeal, and of restoring the action and position of the Federal Government on the subject of Slavery to the principles of WASHINGTON and JEFFERSON are respectfully invited by the undersigned, to hold a Public Meeting at the Broadway Tabernacle on Tuesday Evening, 29th day of April, to hear the report of the delegates from the State of New York to the Pittsburgh Convention, and to take measures for an organized maintenance in the approaching Presidential Canvass, of the great National principles of JUSTICE and FREEDOM promulgated by that Convention.”

The Broadway Tabernacle, erected in 1836, was the house of worship of the Broadway Tabernacle Church, a famous Congregational Church of that period, which had always been very active in all the reforms of the day and particularly in the anti-slavery movement. The building stood on the east side of Broadway, between what is now Worth Street and Catharine Lane, and was set back one hundred feet from Broadway. It had a comfortable seating capacity for about 2500.

The resolutions offered for adoption by the meeting, also drawn by Mr. Evarts, were as follows:—

“*Resolved:* That the treacherous repeal of the “Missouri Compromise,” the wanton renewal of the political agitation of the slavery question, the enlistment of the whole power of the Federal Government in the extension of Slavery over territory devoted by the most solemn pledge and compact to *Freedom*, the countenance and protection given by the Executive of the Union to the violent and cruel tyranny established over the defenseless inhabitants of Kansas, by the lawless population on its borders, and the audacious claim that the Federal Constitution is the Charter and the Federal Government should be the minister, of the maintenance



and diffusion of Slavery as a National institution, have forced upon the Country the issue of Slavery-extension or Slavery-restriction for decision in the impending canvass for the election of President.

*“Resolved:* That our unalterable attachment to the great sentiments of Justice and Freedom which inspired the Declaration of our Independence and are wrought into the whole fabric of our Constitution; our faithful devotion to the dignity, integrity, peace and prosperity of the Union, our reverence for the memory of the founders of the magnificent system of Government which has developed and protected the vast growth of this people to its present rank among the nations of the world, and of the great statesmen of the succeeding generation who have firmly upheld what was so wisely established, compel us to postpone all other political questions, to forget all past political differences and to unite for the restoration of the action and position of the Federal Government, on the subject of Slavery to the principles of Washington and Jefferson as alone compatible with the honor and safety of the Republic.

*“Resolved:* That we have heard with great satisfaction, and sustain with a cordial approval the proceedings of the Pittsburgh Convention, and avow the purpose ourselves to unite and by every just influence to combine the efforts of our fellow citizens for the organized maintenance in the approaching Presidential canvass of the political principles and objects proposed by that Convention.

*“Resolved:* That the Republican Committees or Associations of the several wards in which they have been formed be requested to report to the Executive Committee the names of their Officers and the system of their organization, and that the wards in which no such committees or associations exist be requested to proceed without delay to complete their organization and to report the same to the Executive Committee.

*“Resolved:* That the Ward Committees or Associations be requested to appoint two representatives each to meet the Executive Committee, at such time and place as it may designate in convention for the election of delegates to the Republican State Convention to be held at Syracuse.”

In moving the acceptance of the report of the New York Delegation to the Pittsburgh Convention, Mr. Evarts made the speech that follows:

## "TABERNACLE" SPEECH

*Mr. President and Gentlemen:—*

In moving, Sir, as I now do, the acceptance by this meeting of the report of the Pittsburgh Convention, which has been so impressively introduced to our attention, I shall consult the proprieties of the occasion, and my own disposition, no less than that of this audience, by making but a brief suggestion of some of the principal features of the call, the occasion, and the cause that has brought us together.

Your call supposes, Sir, that the present administration of Federal power has adopted a policy, and is pursuing measures for the extension of slavery over territories once secured to freedom—that the first step in this aggressive movement was a disturbance of a solemn arrangement, which had been entered into between the two opposing interests and sentiments which divided the country, and a violation of the good faith in which that arrangement was cemented, and with which it had been hitherto observed and defended. It supposes that this course of federal politics is a departure from the sensible, necessary, and primary principles on which our government was founded, and the purposes for which it was organized, and has hitherto been maintained; and it further supposes that the public welfare requires that this evil legislation should be reconsidered; that this violated faith should be reconstructed, and that the principles and practice of the Federal government should be restored to those which were professed and acted upon by Washington and Jefferson, and which are alone compatible with our honor, our dignity, and our safety as a people.

Now, Mr. President, let us consider what the three great steps of the Federal government by Federal legislation have been, on this subject of slavery.

At the very outset of our government the common territory, unoccupied by any state jurisdiction, was *all* devoted

by a solemn ordinance to freedom forever. That was the sentiment—that was the action of the founders of the Republic in 1787, and re-enacted in 1789. *All* was not too much then to give to Freedom; and *all* agreed that *all* was not too much for freedom.

Now, at that time, Mr. Madison thus expressed himself, in reference to the Federal Constitution in this aspect. He said that he took it that “the Constitution was formed in order that the government might save ourselves from the reproaches, and our posterity from the imbecility which are always attendant upon a country filled with slaves.” General Lee, of Virginia, says that “the Constitution having done so much, it is to be lamented that a provision had not been made for the gradual abolition of Slavery.” This was the action, this the sentiment then.

Just one third of a century passes away, just one generation of men is withdrawn from the scene, and in 1820 precisely the same question was presented to the American people as to the future fate of its new territory then coming up for occupation by civilized men. And then, gentlemen, in order to obtain one half of that territory for freedom, there must be paid out of that half a region large enough for a kingdom as a ransom for the rest. Mark how the American people and American statesmen and American politicians have changed in thirty-three years!

But, Mr. President, thirty-three years now roll over again. That generation of statesmen has passed off the stage. In the year 1854 the question is again presented to the American people, the American statesmen, and the American Congress—what shall we do between slavery and freedom? Then the ransom paid for the half of the territory is forgotten, and then, by direct Federal legislation, it is determined that the half that was given to freedom one generation ago, shall be taken back by our generation and in our day. This is the second step.

Now let me imagine that another third of a century has passed away—that our generation is withdrawn from the stage—and when we come to the year '87, the date of the ordinance of Freedom, and the year '89, the date of the first free republic of modern times, how shall we show our progress, how shall we mark our statesmanship, if the same path be pursued, but by a solemn declaration that henceforth, in all the territories of the United States, slavery and involuntary servitude shall be forever by law established? There is nothing else for us to do. We gave once all to Freedom. We gave next half to Slavery. We take away next the half given to Freedom, and there is nothing left for us. Wherever Freedom dwells under our flag, Slavery follows close after her.

There is one great and solemn lesson taught by the review, and that is, that no succeeding generation has corrected the error, or retraced the step of its predecessors, and the solemn monition is put to us that we should follow quickly this action by reaction. It is for you now who have seen this thing done to undo it. It is for you to protest, *now*, or your acquiescence will be pleaded with your children for further concessions by them, as the acquiescence of our fathers has ever been pleaded for further concessions by us.

Now, we suppose that this subject of the extension of slavery to the territories, which, if they have any government, are governed by the Federal power, is a legitimate subject of Federal politics, and we intend to act accordingly. We suppose that it is a more important subject of Federal politics than any other, and we intend to act accordingly. We have called you together, and you have responded to the call in one of those echoes which are heard from one quarter of the land to the other. This is a practical question. It is a question of making this sentiment felt in the way that politicians understand—by votes, by influence, by condemnation of the bad and by the support of the good.

We do not intend to be led into any inquiry of sympathy, however aggravating the wrong of the slave may be. We do not intend to be drawn into any discussion of mere ethics, or of mere philanthropy for the "inferior race," as they are called by our Southern brethren. We do not intend to unsettle any social relation, nor to assault or undermine any existing institution, but we intend to exercise the clear right of freemen in determining whether these new and large regions shall be devoted to free labor upon the one hand, or to the occupation of slavery upon the other.

In determining this principle, we have no occasion to quarrel with any of the dogmas that are assumed or argued by those who have an interest in slavery.

It is said by them that slavery in this country has been productive of unmixed good to the negro. So be it, if they can prove it. But it is our opinion it has been productive of unmixed evil to the white man.

They say that slavery is the only relation which is possible in a society which is composed of blacks and whites and mixed races. So be it, if they can prove it. But that only adds to the strength of our opinion that no new territory should be occupied by mixed races.

There is another argument by which the slaveholding interest treats the efforts of the freemen of the North to get possession of some part of these territories. It is said that they have been won *by our common blood and treasure*. Well, if this were an argument to show that the black race ought to be allowed to go into a new territory—if it was pretended that they had been won by the common blood and treasure of the blacks of the South and the white men of the North, I could understand the force of the argument.

The territory has been won by the common blood and treasure of the white men of the whole country, and if God assist the efforts we commence to-night it shall be occupied by the white men of the whole country.



It is said that it is the part of brethren to occupy their common heritage in peace and quiet, and that the white man of the South and the white man of the North should go together and possess the land; but there is one difficulty about this business. It does not depend upon the law of Congress or the law of any State, but it is written in the hearts of the free laborers of our country that they will not work side by side with slaves. Labor, gentlemen, we of the free States acknowledge to be the source and basis of all our wealth, of all our progress, of all our dignity and value; but it is the labor of the free man. Carry through this campaign the principle that the land of the United States which is not inclosed within State limits belongs to the white citizens of the United States. There is nothing revolutionary, I take it, in that.

But, again, our principles favor *general*, in distinction from *special*, legislation. Slavery, as a special interest, does not stand different from other interests. In my judgment the slave interest is no more entitled to the control and protection of the Federal government than the financial or tariff interests. The people should govern the country, or the people should desert the country—one thing or the other.

Another thing in our republican organization is, that we are comprehensive in our politics, and not sectional. White men live all over the country, but black men are geographically situated. The party of slavery is necessarily a geographical party—it is a geographical party in fact, and it is a geographical party by the lines of industry which can make that institution live only in the climate of the South. But free labor can live everywhere. Ours, then, is the comprehensive party—theirs is the geographical party.

But there is, gentlemen, a much more serious evil in our politics than this I have alluded to—I mean that controlling division called by the odious names of North and South. Why, our country has grown very much since these names

originated. When the Constitution was formed the whole population of the United States resided on a strip of territory along the Atlantic coast; and then the country was necessarily divided into a North and South, for it was all East and no West. But I should think, that, with the growth of our institutions and population until they now occupy the continent and look out upon the broad Pacific, it might be conceded that there was something besides a North and a South—that there was an East, a Centre and a West. We, then, as Republicans, aware that we stand, not by the North, not by the South, but by the labor of freemen, wherever they are, and against slavery and the lovers of slavery, wherever they are—we expect to find lovers of freedom in Maryland, in Virginia, in Missouri, in Kentucky, in Tennessee, in Texas, and in every slave State. We know we shall find lovers of slavery in Massachusetts, in New Hampshire, in New York, in New Jersey, in Pennsylvania, and in every free State; and if there be anything geographical in that discrimination of parties, it is the geography of the United States. Mr. President, I have no stone to cast at the slaveholder, upon any accusation of a sinful exercise of mastery over the abject population that crouches at his feet, for though each slave owner may have a gyve and a manacle upon the person of each slave, the *system of slavery*, by a terrible retribution, is a gyve and a manacle upon the *whole body* of the society in which it exists. How urgent, then, the obligation upon us to see to it that neither by us, nor through us, nor *over* us, this gyve and manacle are fastened upon any nascent State, any new community.

There is another very great difficulty which the North—I will not say “North,” for I have eliminated that phrase from our politics—but which the free States of this country greatly suffer from. I mean the *degradation of politics*. We have had left among us, until recently, great statesmen,

great orators, great public men; but these gentlemen had commenced their career under the impulses and influences of the new government, and the general principles of freedom and equality with which the new government started. Since, however, slavery came to control the government of its own States, and by that means to control the Federal government, and the politics of the free States through its patronage, I can tell you that, so far as I know, though the old men may be content to acquiesce, the educated, intelligent, public-spirited young men of the free States have studied, and will study, anything but politics which teaches them their degradation.

But roll back the tide; let it be understood that instead of your accomplished diplomatists and jurists being interrogated, before they can receive admission at Washington, as to what they think about slavery, that it may be seen if they are acceptable to the South—change the tone of the question—encourage a free expression of opinion on that as on other subjects—or, if the question is to be put at all, let it be put to the public men of the slave States, whether they are satisfied that slavery is a *domestic* institution, or claim it to be a *national* institution—and you will have your politics purified.

But, gentlemen, our *duty* in this juncture of public affairs, has higher claims upon our attention than all these considerations. Allow me, by way of illustration, to revert for a moment to an incident of the last winter. The unwonted rigor of the season had spanned the Ohio with a *free* bridge. A poor slave-mother, with all the treasure that she had in the world—her children, from a growing boy and playful girl to an infant upon her breast—had passed over that free bridge without let or hindrance, and was on the free soil of Ohio.

The power of the Federal government, under a law of which I have here no complaint to make, pursued that slave-

mother to send her back to servitude; and, not able to release herself, she let out the spirit of her child into the free light of heaven, even through the dark portal of death. If it was noble and brave in the stern Sempronius to taunt the Roman Senate with their long debate which of the two they would choose, slavery or death, who shall say it was ignominious in that poor slave-mother, by a quick decision and flashing execution, to determine that question for her posterity. Ah! gentlemen, "one touch of nature makes the whole world kin." And there are many of us who feel a greater pride in sharing the bright red blood that ran through a heart bounding for freedom, under the dark bosom of that poor slave-mother, far greater than in what we have in common with the pale faces of some of the statesmen of the North.

Thus much for illustration of the lesson that I would teach. The infant State of Kansas, now reposes upon the bosom of the American people. The vows that swore she should be born free have been violated; the charter of her manumission has been repudiated, and she was born exposed to slavery. A manly band of freemen has saved that infant State; but the Federal government is now fast pursuing to snatch it from their protection and from yours; and if you admire the spirit of the poor slave woman of Kentucky, that would treat her offspring thus to save them from slavery, what shall I say to you to induce you to come forward to save Kansas, and her millions to be born, from that slavery from which a noble band of freemen thus far have rescued her? Are the *slave women* of Kentucky of nobler blood than the *free men* of New York?

But, gentlemen, it is said that "Union must and shall be preserved" and that is the principal object of my speech to-night. I should suppose that eighteen hundred years, without a new experiment, had furnished illustration enough of the loud shouts which may be put forth in defence of the

shrine of the "Great Diana of the Ephesians," when the real interest of the shouters was concerned in the business of "Demetrius the Silversmith." And for all that class of shouters for the preservation of the Union, I have no respect. Their occupation in the government of the country, through the slave interest, is the "business of Demetrius the Silversmith," and they must save Diana's shrine, in order to support that business.

But there is a very large class of most worthy and patriotic citizens, who are justly sensitive upon any subject which looks askance on good faith and good feeling, so important, undoubtedly, to be observed in all parts of the country; though how they can complacently look on and recognize good faith or good feeling in the bad faith and bad feeling practised upon the other side of the Union, I do not know. Now, this class has found an eloquent voice in the speech and letter of an accomplished orator\* of New England, in which he closes by expressing the sentiment that he "cannot unite with any band which does not follow the flag and keep step to the music of the Union." These are my sentiments precisely. But it becomes important to know what the flag and what the music of the Union is. I am not myself sensible of any strange transmutation of the American people, which, in the course of seventy years, should change the noble hymn of American Freedom from being the music of the Union into a sing-song chant in praise of African slavery.

And, as to the "flag of the Union," I would say to that eloquent orator, that the greatest statesman of New England, when, in possession of his best reasoning powers and overwhelming oratory, he stood up to support the Union and Constitution, could give him a description of that flag. It is the "gorgeous ensign of the Republic, now known and honored throughout the earth—still full, high advanced—

\* Rufus Choate.



its arms and trophies streaming in their original lustre—not a stripe erased or polluted, nor a single star obscured—but everywhere spread all over, in characters of living light, blazing on all its ample folds as they float over the sea and over the land, and in every wind under the whole heavens, that sentiment dear to every true American heart—“*Liberty and Union*, now and forever—one and inseparable!” That is the flag of the Union which you and all of us will follow, and keep step to the music of the shouts of freemen that attend it.

But when we find that flag in the hands of whatever standard bearers—whether they assume the honored name of the Democratic party, or any other, or with whatever shouts of patriotism it is flaunted to the breeze—and notice that it is unfurled with every stripe polluted, and every star obscured—all its blazing glories darkened into shame, all its legend of living light extinguished and replaced by the mocking motto, *accursed* to every true American heart—“Slavery and Union, now and forever—one and inseparable,”—that flag, too, we will follow, but only to trample it under our feet, and to strike down its standard bearer, as a conspirator against the *public freedom*, and a traitor to the honor and safety of the Union.

## V

### SPEECH AT THE ACADEMY OF MUSIC

OCTOBER 22, 1856

#### NOTE

During the Presidential canvass of 1856 a mass meeting was called together, October 22, 1856, in the Academy of Music, New York, under the auspices of the Young Men's Republican General Committee of the City of New York. The Academy was crowded. Governor Robinson of Kansas was the first speaker. Mr. Evarts was the only other speaker of the evening and spoke as follows:—

#### SPEECH

*Mr. President, and Gentlemen of the Young Men's Republican General Committee, Ladies and Gentlemen of the City of New York:—*

The great and honest fame of the first Governor of Kansas has drawn together, under the auspices of your energetic and effective association, this magnificent assemblage of the citizens of New York, to pay their homage, in respect and enthusiasm, for his great achievements in the cause that we all honor, and to draw from his instructions some new incentives to activity and exertion for the triumph of that cause.

By the encouragement, sir, of your invitation, and by that alone, I, having no other claim upon the attentions of this assembly than my interest in the common cause, may perhaps tax your patience a little, but yet would ask some serious attention to the issues of life and death of a great people, that are now swelling your hearts.

We are in the midst of the canvass of a Presidential election. On the 4th of March next by the forms of the Constitution, the Chief Executive intrusted for the last four years

with your name, your honor, your power, lays them all down at your feet, and you, sitting in majesty as a sovereign people, to pass judgment upon this man who retires, say, "Well done, good and faithful servant!" or, "Back, caitiff, to the obscurity of private life!" To his successor, you say, "In your pledge to us we reckon our honor, our safety, our liberty secured. Take all our power, all our dignity; they are safe in your hands." Such is the form of the Constitution. How much substance there is in it, is to be determined on the 4th of November, when you are to say to the man who raises aloft the flag of "Liberty and Union," or to the man who displays the banner of "Slavery or Disunion," which you prefer.

I should not, gentlemen, need to say that the pending canvass touches the *election* of President, and that only, had not an eminent citizen of the United States, having himself once filled that high office, and seeking it now a second time at your hands, undertaken to exhibit himself before the country as maintaining that there was something beyond the *election* of a President involved, and that is, by what suffrages he should be chosen, and whether he should be obeyed after his election. Both those grave questions, how he should be elected, and whether he shall be obeyed after his election, were settled in 1789 by the adoption of the Federal Constitution, and no body in this country has authorized any politician, any office seeker, any orator to say that when a President is chosen by the constitutional number of electoral votes, he does not possess all the power, all the dignity, all the authority conferred by the Constitution, and would not receive the respectful obedience of all the people of the United States.

Why, gentlemen, eight States of this Union, touching each other, namely, Massachusetts, New York, Pennsylvania, Virginia, Ohio, Kentucky, Indiana and Illinois, can elect a President of the United States, and does any man tell me, that if these eight States unite their electoral votes upon any

candidate, the other twenty-three States of the Union will not obey him?

But, gentlemen, at this time, the election of a Chief Executive, considered merely as the depository of the public power, is of the utmost importance. And why?—because all the wrong, all the crime, all the shames, all the sorrows of Kansas that fill our hearts with anguish whenever they are called to our minds,—all of them were *against the Constitution and against the laws*. It was not that the Constitution, with all its full guarantees of personal rights, was not extended over Kansas. No! Your Constitution was right, your laws were right, but your Executive was wrong. Where were your Constitution and your laws then? Why, where the Constitution and laws of every country are when a tyrant holds the power. Where was the Constitution of England—where Magna Charta,—where the muniments of liberty that Parliament, for a thousand years, had built up, when King James established his superstitious and cruel despotism? when Jeffries was at the head of the Judiciary, when the bloody Dundee and his bare-breeched Highlanders overrode the peaceful Scottish Lowlanders, and Mad Tyrconnell, with his Rapparees, scourged the Protestant settlements in Ireland? They were trampled under foot. But when William of Orange brought back to operative vigor the Constitution and the laws of England, where then was King James, and where Judge Jeffries, and where Tyrconnell, Dundee and their ruffian crew? King James was a pensioner on the bounty of his royal cousin of France, picking up the crumbs that fell from his table; Jeffries languished in the Tower, smitten with loathsome disease, and saved from the scaffold only by the kind hand of natural death; Tyrconnell, and Dundee, and their base followers, who had not fallen by violence, were vagabonds from public Justice or its victims. And when your Constitution and laws are restored to their just supremacy by the Chief Magistrate, Fremont, where will

President Pierce, and Judge Lecompte, and Marshal Donaldson, and Sheriff Jones, and the ruffian *posse* of Atchisons and Stringfellows be found?

But, gentlemen, it has come to be a part of our Federal system of politics that, at every election of President, there is some leading issue, or political idea presented, to receive, and which does receive, the stamp of the popular will, one way or the other. And you will take notice that where the question has once been fairly put, when it is included in the election and has been passed upon, if there is anything that the political history of our people discloses, it is this—they will not have it reargued, but will consider it settled. Now, such being the habit of our elections, what is the political issue that is before us for decision, beyond and in addition to the great and important fact of who shall wield the Executive power of the country? It relates wholly to the subject of slavery—it does not relate in the slightest degree to the power of the Pope, not in the slightest degree, but exclusively to the subject of slavery. As I understand the proposition presented for approval by the Democratic party to the American people, and which it demands shall be adopted as a part of our constitutional law by and in Mr. Buchanan's election, it is this—the dogma is this—that the free Constitution of the United States—the freest, perhaps the only truly free, government in the world—when by the advancing tide of population it is extended over virgin soil, engenders the growth of chattel slavery, and that so ineradicably, that it is not in the power of Congress, or of the people of the territory, to remove it from the soil, but there it is by the proper vigor of the Constitution; that nothing can be done by the general government or by the local population to affect the destiny of that fair region and its future population in this regard, but at the moment when the question of the formation of the Constitution of the nascent State arises, then alone the institution of slavery can be lawfully suppressed or excluded.



On the other hand, the great proposition of constitutional law which we present with Colonel Fremont for your approval, is this—that the Territories of the United States belong to the people of the United States, and are governed by the government of the United States,—that by the Constitution, Congress has full power to shape the laws of the Territories in every respect, including this matter of the exclusion of slavery, but it has not the power to establish slavery—and why? Because your Constitution itself provides, among its guarantees of personal rights, that by no means in the power of the Federal Government shall any man be deprived of liberty “without due process of law.”

These propositions, gentlemen, are wide apart. Is the issue they make important? Is there anything in this country as important? Is there any difference between the States of the Union—is there any difference between their laws and customs—between their characters, between them in wealth, in progress, in liberty, except what slavery makes? Is not Maine like Wisconsin, and New York like California; is not South Carolina like Missouri, and Maryland like Louisiana? All that are free are alike, and all that are slave are alike,—and how different are the free from the slave! The question, then, involved practically in this issue, is, whether all the Territories are in danger of slavery, or are safe against that hazard and secure against that danger?

Well, there is another party in the field having, I doubt not, for its basis some great political sentiment—I don't know what it is—the nearest I have ever heard anybody come to it, is that Mr. Fillmore, its candidate, says he knows no North, no South, no East, no West. Now I may be mistaken, but my impression is that when the electoral votes are counted next November, he will find this lack of acquaintance is reciprocal, and that neither the North, the South, the East nor the West know him.

Between whom, gentlemen, is this issue and this contro-

versy? Some people say it is between the North and the South; others say it is between the Free and the Slave States. This is not so. Is it so? If it were, it were soon settled, for there are 120 electoral votes only from the Slave States, and 176 from the Free States. No, you cannot put it off in that way. It is not between any great aggregates like States, any great masses like sections—it is between the people of the United States—between the lover of slavery, whether he live here, or wherever he lives, and the lover of freedom, whether he live in South Carolina, or wherever else. I take it there are plenty of people in New York who don't believe in Fremont, and don't believe in excluding slavery from the Territories. I take it that there is as much difference of opinion on this point between Franklin Pierce and John P. Hale, both of New Hampshire,—I take it that there is as much difference of opinion between Cassius M. Clay and John C. Breckenridge, both of Kentucky, as between any two men in the land. I take it that there is as much between John C. Fremont and James Buchanan, both citizens of Free States. No, gentlemen, hand to hand, foot to foot, eye to eye,—you have got to fight this battle with your next-door neighbors! Everywhere some of the people are for slavery; everywhere some of the people are against it.

Now, gentlemen, what have we to say about this? What are we to do about it? We have simply to vote, and vote as we think. And on the result of that ballot rests the determination of the great issue. The traveler climbing the Alps, when he reaches a certain summit, has pointed out to him a small thatched cottage, with steep roof declining either way. That roof, with its ridge pole, divides the course of the waters of the Alps. Whatever little drop of rain, or tiny flake of snow falls upon this side or that of the narrow roof, finds its way down and joins with some little rill, some brook, some stream, and swells, as it may be, with its trivial bulk, either the dark waters of the Danube, that roll between shores

cursed with slavery, into the gloomy wave of the Black Sea, or mingling with the glad ripples of the Rhine, flows on to the Atlantic Ocean, which bears upon its bosom the commerce of Free States. On the fourth day of November, some hundred thousand poll-booths will be opened for the multitudinous suffrages of this great people, and of the votes, then thick and fast descending, the story will be told in the same way. Whatever single ballot falls at every hustings, swells the tide that is to carry forward the forces of free society to made glad our whole land,—or else the overwhelming tide of slavery, triumphing and to triumph, over the hopes of civil liberty. Your vote is to tell one way or the other. You may have reasons for not throwing your vote for Fremont which seem to you sufficient. It may be because you have heard he is a Catholic. Still, your ballot goes for slavery. You may give as a reason for not voting for him, that you would not vote for a man whose party harbors an Abolitionist. Nevertheless, you vote for slavery; and your vote will live, but you and your reasons will die.

Now, gentlemen, when our part and duty as freemen seems so very plain a matter, why and how are we embarrassed and impeded in our efforts to unite all the forces, all the voices of free society on one side, as without hindrance or difficulty, all the forces and all the voices of slave society are combined on the other? It is because those who ought to be with us are deterred through foolish sophistries or idle fears from exerting their powers as voters in this canvass. They say our party is *sectional*, and that we are particularly sectional in our candidates. Now, let us look at this. Where do our candidates live? One of them lives on the shores of the Atlantic, in the State of New Jersey; the other on the Pacific, in the State of California; and it would be a pretty large section of this country that would include both of those States.

Well, now, if you will go with me to the river which divides

Virginia from Ohio, and put the foot of the compass down in the middle of that stream, I will draw a circle with a radius of sixty miles which will touch Pennsylvania and Kentucky, the States in which the Democratic candidates reside. But that is not sectional! If a party nominates for President Colonel Benton, who lives in Missouri, and for Vice-President, Judge Douglass, of Illinois, that would not be sectional and yet the States are close together. But if you would put up Mr. Bissel, of Illinois, for President, and Colonel Lane, of Indiana, for Vice-President, that is sectional. These States are not any nearer together than the other two, but still that is sectional. Now, let us try it again. If you nominate Governor Chase, of Ohio, for President, and Cassius M. Clay, of Kentucky, for Vice-President, why then you are sectional again. So you perceive it all comes to this sheer nonsense, that if one or the other of the candidates for the high offices of this government is not *pro-slavery in sentiment*, then the nomination, and the party making it, is sectional.

Let us take the antecedents of our candidates. Colonel Fremont, born in what was then the southernmost State of the country, Georgia—reared, educated, imbued with such principles as he would take from that soil, in the southernmost State in feeling, South Carolina—living now in California, the southernmost political division of our Pacific possessions—a man born, bred and educated in a Slave State, and that never, never lived in a Free State till he made a Free State for himself to live in. But he is sectional. What a monstrous perversion, what a miserable practice upon the intelligence of the American people is it to accuse the Republican party of being sectional in its candidates, when it takes for one of them, a man born and bred at the extreme South, and who never resided in the North! Well, they say again, that Fremont is a young man, and that Buchanan is an old one. To that we reply, we would rather have a young man who is in favor of liberty, than an old man that is in

favor of slavery. And moreover, we would rather have a man living all his lifetime under the influence of slavery, and who yet favors freedom, than a man living all his lifetime under the influence of freedom, and who yet prefers slavery.

Well, what is it to be sectional? Are our principles sectional? What are they? And what would be sectional principles? Whenever any party is constituted in the United States with principles that seek the aggrandizement, the development, the enrichment of one section of the country at the expense of, or in disregard of, the general interests of the whole country, that party is sectional. Are our principles exposed to this condemnation? Are the principles of free speech, free press, free soil, free men and Fremont local principles that we are striving to spread for the aggrandizement of any section of this country, and in disregard of the interests of the whole country? Are they or are they not? (Cries of "No, no!") Look, then, at the other side, having for their principles, nothing, nothing, nothing, but the expansion, the extension, the aggrandizement of a local, exclusive, sectional interest of property—slavery, at the expense, first, of the local interests of the new Territories, and secondly, to the disgrace and degradation of the Union. Now, gentlemen, when a man tells me a sectional party is an evil in our politics, I agree with him. But when he seeks to determine for me which is the sectional party, and tries to make me believe that it is a party that endeavors to extend the common rights, interests, and institutions of American free society, I take leave to differ from him.

But again, they say our party is revolutionary. Well, in a political sense, it is. It is revolutionary, first, in the sense of turning out of office those now in—they like rotation in office, but no revolution out of office. But I am not to be frightened, nor are you to be frightened, by being told that a measure or policy is revolutionary. The question lies behind this. If the present state of things is satisfactory, then a rev-



olution is wrong and not desirable. But if not, then a revolution is right, and may be necessary. The question is, whether it is a revolution to turn things upside down, or to set things right side up. And from the time of General Washington down, the people of this country have been in favor of turning things right side up whenever they needed it. But how is our party revolutionary? It is revolutionary in this, that we mean to change the political power of this country and place it in accordance with the Constitution, to wrest it from the minority that have wielded it against the spirit of that instrument, for eighty years, and place it in the hands of the majority. Strange to say, gentlemen, now is the first time that this has been seriously attempted. The slaveholding interest has governed this country up to this hour. How does it do that? When a grave statesman of Athens surprised the ruler Pericles in his gambols with his infant boy, and was disposed to check his play as unsuited to his high station, Pericles said to him, "Why, sir, that boy governs Greece; he governs his mother, his mother governs me, I govern Athens, and Athens governs Greece." So the slaveholders govern the Slave States, the Slave States govern the Federal Union, and the Federal Union, by the introduction of its politics into State affairs, governs the Free States.

There is another revolution in politics, that if our party is successful it will begin to accomplish, and that is, to redress one of the principal dangers that threatens the Constitution of the United States. As you all know, the two political forces that make our system harmonious, are like the two forces which govern the solar system, the centripetal force of the Federal Government keeping the States together, and the centrifugal force of State-rights, preserving the separate States from being merged in the central power. It is essential to the right adjustment of these two political forces in our system, that their reciprocal action should not be disturbed by any combinations of rights or interests among the States.

Attentive to this consideration, the wisdom of the framers of the Constitution introduced this provision into that instrument, that "no State shall, without the consent of Congress, make any agreement or compact with another State." And why? Because combinations of States, having their interests united, would disturb the harmonious working of the government, just as planets of the solar system, drawn from their separate orbits, and forming new aggregates of matter, would unsettle the whole system of gravitation. I would like to know if the unity of interests, and the determined purpose of the Slaveholding States to adhere together, do not make a compact stronger than ink or parchment could frame, stronger than the family compact of the Napoleon or Bourbon dynasty. They are united, and unless severed by a revolution of politics, the system of this government, the reciprocal action of Federal and States-right principles never can play in harmony now. The State of Maryland, the State of Missouri, the State of Kentucky, whose policy would be to get rid of slavery, if each was left free to consult its separate interests, is held in the bonds of this slavery compact. Now, we mean to make a revolution in this respect in our national politics.

There is yet another revolution in politics which we aim at and will effect. We, the people of these United States, are one mass; we have no division between a privileged class or peerage and the commonalty, as they have in Great Britain. Before the people of that country can make or alter any law, they must collect the sense of the common people by themselves, through the Commons, and the sense of the peerage by itself, through the House of Lords, and if the sense of the Commons and peerage, taken separately, do not concur, no law can be made or altered. That is to say, the peerage have a veto upon the wishes of all the rest of the nation. Now, although in our Constitution there is nothing of that kind, yet in our politics it is the ruling idea. We

must have the collective sense of the common people—that is, of the people of the Free States;—and the collected sense of the aristocracy—that is, of the Slave States—and only what they concur in, can become a measure or the policy of our government.

That is the present system of our politics. It is this notion that is constantly suggesting that you must always have one candidate in the Slave States and one only in the Free States, and that any system of policy that does not receive support in the Slave States is said to be unconstitutional and threatening to the Union. Now, as the Constitution does not make slavery an *estate*, to be separately consulted, we don't intend to consult that interest separately, but all the people and all their interests equally and together.

Another reason given as to why it will not do for good citizens to support our ticket is, that if we elect our candidates the Slave States will dissolve the Union. Well, gentlemen, in a matter of the first consequence, I agree with Mr. Burke, that “it is better to be despised for too anxious a solicitude, than to be ruined by too confident a security.” And I never will calculate or speak lightly of the value of the Union. Show me the remotest threat of danger to the Union, and I will join with whoever will join, until that danger is removed. But, gentlemen, I must have my own judgment of where the threat of danger comes from. And this is but another of the fallacies brought into this campaign; they think to alarm us by raising the cry that the Union will be dissolved, and withdraw our attention from the true source of that peril. Now, gentlemen, it is not so easy to dissolve the Union. But if it ever is dissolved, and I do not believe it ever will be, it will be dissolved for a reason foreseen by the eminent conservative statesman, Mr. Webster. He understood this business perfectly. He was devoted to the Union. He could descry the danger afar off, and hurry to the rescue. Where did he find it? It was not from inattention to the

demands of Freedom. He said this question of liberty and right has taken a far deeper seat in the American mind and American conscience than any question of politics. He said it might be guided by reason and made obedient to the Constitution, but any attempt to repress, or confine, or smother it, would only inflame or exaggerate it till it exceeded all restraints, and then, he warns his countrymen in this emphatic language: "I know nothing even in the Constitution or in the Union itself which would not be endangered by the explosion that might follow."

It is always well to *look at both sides*, and that is a thing that people don't always care to do, but that lawyers have to do. When King George and his Ministry, headed by Lord North, were talking about the King's prerogative, and the power of Parliament to bind the people of the Colonies by any laws which it chose to enact, Burke and Lord Chat-ham were urging: What will become of the Empire, and what of the Colonies? Attention was paid only to the powers of Parliament and the King's prerogative, and the consequence was that they lost the Colonies. And, in like manner, there are two sides to this business of the danger to the Union. We have no patience with this cry about the dissolution of the Union! It is time it was out of our politics. All these people who talk about it have an undefined notion that each of those great States—the Palmetto State, for instance—was once a nation, and that all it has to do is to get out of the confederacy, and it will be a nation again. No State in this Union, of the original thirteen, ever was a nation. They were all parts of one political system while they were Colonies of England—before we had that growth in the progress of events that authorizes the separate establishment of a new nation. We had united and become one—articulated together in the embryo. We were first United Colonies, then United States, and when we declared our independence, we proclaimed in the name of "the United States of America,



that these United Colonies are, and of right ought to be, free and independent States." That was our birth. We were not born a feeble brood, of small and ignoble States. We were a true whelp of the British lion, and produced, as is the manner of that noble beast, at a single birth! A *nation* was born in a day! So, what are you to dissolve into? Not into the original condition of several nationalities, or single States? You have got then to do what no nation ever did. You have got to tear your country in pieces. It is not a matter of parchment nor a resumption of dormant nationality. It is a dissevering of the warm body of your mother country. And when you find any instance of a people, living under the worst government, attempting this, it will be time to fear that the people living under the best government the world ever saw, will attempt it. Poland was dismembered, but not by Poles. A great deal has been said, gentlemen, about dissolution, to frighten people from voting according to their choice, and a very eloquent man, the resources of whose logic and the splendor of whose oratory no man admires more than I do—I mean Mr. Choate, of Massachusetts—finds warrant to vote for Buchanan in this same reason. Now, there is a great deal of power in a figure of speech, and if you yield to it and don't scrutinize its logic, you are lost. Mr. Choate, in this connection says: "Believing the noble Ship of State to be within half a cable's length of a lee shore of rock, in a gale of wind, our first business is to put her about, and crowd her off into the deep, open sea. That done, we can regulate the stowage of her lower tier of powder, and select her cruising ground, and bring her officers to court-martial at our leisure."

Now there is an admirable figure!—admirable but delusive—for it assumes the whole question, and if you jump on its back and let it run away with you, you are lost, as Mr. Choate was. There are other perils to which the good ship of commerce, as well as the noble ship of State, is exposed,



besides a lee shore. There is danger always to the good ship of commerce in mid-ocean, if she have a valuable freight, from within, no less than from without. There is always danger of mutiny, and sometimes for the purpose of hauling down the bright flag of honest commerce, and running up *the dark ensign of the slave trader*. Now, gentlemen, do the loyal sailors of the little ship love that good ship in whose womb they are safe against the storms of wind and sea, whose tall mast carries the flag of their country's honest commerce, whose every fold gleams with the lightnings of their country's power against their enemies, and with the smile of their country's love for themselves? Do they love their good ship less when they discover a plot or an outbreak of mutiny? Do they love her any the less when the treason is suppressed and the traitors are punished? With glad cheers they salute the free flag of honest trade, still flying at the mast head, although it be with hearts bursting with anguish at the sad fate of their poor comrades that dangle at the yardarms. Now, gentlemen, you can judge as well as I, which figure of speech best illustrates the dangers our ship of State is now encountering.

As the Slave States, then, cannot dissolve into what they were not, original separate sovereignties—they must go through a new revolution under the lead of a new Declaration of Independence. For, I take it, though a good deal of late has been said against *our* Declaration of Independence, “a decent respect to the opinions of mankind requires that the” Southern Confederacy “should declare the causes which impel them to the separation,” and the fundamental principles on which their new polity is to be built. Now, let us have the matter up for once. Our Declaration of Independence starts with “the glittering and sounding generalities,” that are now deemed so dangerous, that is, “that all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty

and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed: that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." It is these doctrines that are frightening our pro-slavery friends, North and South, now. This "passionate and eloquent manifesto" is feared as disorganizing. The new "Declaration," I imagine, will have none of these faults of glitter or eloquence, but only plain working political truths. It will begin somewhat in this sort: "We hold these truths to be self-evident: some men are born weak and some strong, physically and mentally; some men are born to wealth, and some to poverty; some are heirs to education and learning, and some to ignorance and folly. We hold these further truths to be self-evident: that the strong, the rich and the learned, own the the weak, the feeble and the ignorant." Now when you have established that as *self-evident*, it is clear that anything you may choose to add to it will be equally self-evident. They will then proceed: "We hold that these different classes have certain inalienable rights; one is the right of the strong, the wealthy, and the learned, to life, liberty and the pursuit of happiness, and also to the pursuit of the life, liberty and happiness of the feeble, the poor and the ignorant; while to the unfortunate class, the poor, the weak, and the ignorant, are secured the inalienable right to be protected and encouraged to labor, that the fruits of their labor may be eaten by their masters."

Now constitute a State on such principles, and you have a good working system of government. What will the grievances be which will justify the separation? Chiefly, no doubt, that *our* government cherishes liberty, a free press, free

speech, a free pulpit, free literature, and free labor,— that it dares to hold the monstrous revolutionary red, or black, or red and black, Republican doctrine,—that “greasy mechanics, filthy operatives, and small-fisted farmers” have a right to vote! Well, now, would not the general opinion of mankind justify any nation, any people in throwing off such a despotism, and would not such a recital of grievances approve itself to the good sense of the civilized world?

But there is much mischief from the prevalence of the opinion, vague and unsubstantial as it is, that a dissolution of the Union is possible. Many men in the North believe that, in every disaster to freedom, there is one resource which we have left; that if we are beaten and trampled down, if slavery be waived in triumph over us, that *we* can dissolve the Union and have for ourselves a separate government, relieved from this element of discord and violence. Gentlemen, that is a wretched mistake. You cannot get rid of your country if it become hateful to you. You cannot slip out from your government if it be tyrannical. If you have not virtue enough to vote, you have not virtue enough to fight.

If you have two Free-State neighbors, a Fillmore and a Buchanan, to hold down every Fremont in our political struggles for freedom under the Constitution, they will keep you down when you are striving to relieve yourselves from a tyranny of which you are tired. You ought not to desire to get out of the government even if it should become oppressive because by the Constitution and the laws you have the political power, when you choose to exert it, to remedy the evil complained of. But when you have not the virtue to vote for a man who would save you from tyranny, you have not the virtue enough through seven years of war and misery to conquer a peace, as your fathers did. Now, gentlemen, won't you work harder, won't you talk louder, won't you strive better to make the government of your country what it should be, when you know that whatever it may be, you

cannot escape from its dominion, but must bear it with what grace you may?

What are we coming to if we don't accomplish this proposed revolution in the politics of this country? I don't think there ever was so great, so melancholy, so gloomy a change in the prospects of any community, as in eighty years from the time of the Revolution has been effected in the social condition and general moral standing of the white inhabitants of the Slave States. In all that I have said or thought about slavery in this campaign, I have never touched upon it as a social institution, in the relation between the masters and their slaves. I have never touched upon the oppression of the slave; never sought to excite sympathy; never sought to disturb the relation of master and slave in the Southern States. Nor have I spoken to-night, nor at any other time, of slavery, except as a political institution, and in its influence on the liberty of our free fellow-countrymen. If you compare, with some little attention, the general feeling of the people, the tone and morality of the Slave-State communities on all questions of public liberty and common right in 1776 and so in 1789, with the exhibition that their governments, the people in primary meetings, their public men and their public papers, make of themselves before your eyes and mine in this campaign, you will agree with me that there never was so melancholy a reduction of the scale and standard of civil white society as has taken place in that portion of our common country, a portion which we love no less than any other and which we will do everything in our power, under the Constitution and the laws, to raise to as high a condition of social and material prosperity as is enjoyed by ourselves.

This is very melancholy to contemplate. General Washington was always open and clear in his demands of liberty for the slave, always in favor of freedom for himself and everybody else. He was before and during the Revolution the foremost man of Virginia. Now, look at the proud

Commonwealth with Governor Wise at its head as its representative man, and look at what he has dared to say—and to say, too, in the presence and hearing of his civilized countrymen, and as the controlling sentiment and policy by which he was governed in his political preferences—that the party which, by the extension and the opening of the new markets for slavery, would raise the price of the slave-born natives of his State, so that he could sell them away from their native homes at an enlarged profit to their masters—that *that party* would receive his support. It is for this that he approves and supports Mr. Buchanan's policy as calculated to raise the market value of men, born and reared on the soil of Virginia, from \$1,000 to \$5,000 a head. I never heard so infamous a sentiment from any man who had learned to speak a civilized tongue. It is the doctrine of the king of Dahomey, neither more nor less. The King of Dahomey derives his wealth from the price of his subjects whom he sells for deportation into foreign slave markets. "But," he says in effect, "this accursed policy of the United States, of England, and of France, that has suppressed the slave-trade, has reduced my profits. One of my black subjects that I get but \$50 for, sells in Cuba for \$800; but if you only restore and legalize the slave-trade I will get \$800, less the mere commercial freight." Now, if that is not Governor Wise in sentiment and policy, I don't know what the thing means.

But again, General Washington used to preside at meetings discussing the subject of slavery and the best means of its *abolition*. Now, Mr. Underwood cannot go to Philadelphia merely to discuss in your Convention the question of the *extension* of slavery without being banished from the State of Virginia. That is what they do in Virginia now. That is how they think and feel in Virginia now. The last mail from Wheeling brought us news that a Baptist clergyman had been sent from the State "because he was not content to advance



the cause of Christ *in conformity with Southern institutions.*" Now, gentlemen, we won't accumulate epithets; but did you ever hear such a sentiment? I have been told always that the cause of Christ bent the institutions of men to its own supremacy, never that it accommodated itself to human institutions, if it were at variance with them. Recently, gentlemen, there occurred in the State of North Carolina an instance which happens to be exactly the counterpart to one which occurred in Virginia when Mr. Jefferson was in the prime of his life and activity. Professor Hedrick, a native of North Carolina, always living there, educated there—a professor in its university—wrote a letter, not about the abolition of slavery, but simply expressing his opposition to the extension of slavery, and his intention to support Fremont for the Presidency. He wrote this letter, giving good sound, political, statesmanlike reasons for his opinions. The faculty at once meet, tell him he is a nuisance, that they require his services no longer; and the students burn him in effigy on the campus. In Mr. Jefferson's time, Dr. Price, of London, an eminent philanthropist, had written a pamphlet against slavery, in general condemning it, with a view to its absolute suppression. He sent to Mr. Jefferson a copy of this pamphlet, and Mr. Jefferson wrote in reply this letter concerning it, and the effect of circulating its doctrines in the United States of America:

Mr. Jefferson begins by speaking of the manner in which he thinks the pamphlet—which, it seems, had been extensively circulated in America—will have been received. "Southward of the Chesapeake," he thinks, "it will find but few readers concurring with it in sentiment." From the mouth to the head of the Chesapeake, it would be received more favorably,—“The bulk of the people approving it in theory;” slaveholding “keeping the consciences of many uneasy.” While northward of the Chesapeake the opponents of its doctrines would be about as rare as “robbers and murderers.” He then proceeds to say:

In Maryland I do not find such a disposition to begin the redress of this enormity as in Virginia. This is the next State to which we may turn our eyes for the interesting spectacle of justice in conflict with avarice and oppression—a conflict wherein the sacred side is gaining daily recruits from the influx into office of young men grown and growing up. These have sucked in the principles of liberty, as it were, with their mother's milk. And it is to them I look with anxiety to turn the fate of this question. Be not, therefore, discouraged. What you have written will do a great deal of good; and, *could you still trouble yourself with our welfare*, no man is more able to give aid to the laboring side. The College of William and Mary, in Williamsburg, since the remodelling of its plan, is the place where are collected together all the young men of Virginia, under preparation for public life. They are there under direction, most of them, of a Mr. Wythe, one of the most virtuous of characters, and whose sentiments on the subject of Slavery are unequivocal. I am satisfied, if you could resolve to address an exhortation to these young men, with all the eloquence of which you are master, that its influence on the future decision of this important question would be great, perhaps decisive.

Thus you see, that so far from thinking you have cause to repent of what you have done, I wish you to do more, and wish it on the assurance of its effect. The information I have received from America of the reception of your pamphlet, in the different States, agrees with the expectation I had formed.

Now, gentlemen, is there not some difference made in eighty years, when Jefferson applauds and thanks an English philanthropist for having mooted the question of slavery, and when he speaks of the good effect which such a pamphlet would have on the ingenuous youth receiving their education for public life? Is there not some difference between that state of feeling in society at that time, and that which is displayed under your eyes against Professor Hedrick, a native of North Carolina, and a professor in its state university?

I have a word, gentlemen, to say as to what the Republi-

can party has done, and what it is going to do. Great revolutions, even in the settled course of politics, are not wrought in a day. But nevertheless, great changes do sometimes take place in a short time. When King James, of Scotland, was traveling southward, to assume the English throne, opened to him by the demise of Queen Elizabeth, he was humbly attended by eight hundred Puritan clergymen of England, with a petition beseeching from him the protection of the crown that they might, in peace and quiet, observe the forms of their religion. The haughty monarch flushed with his new-gained throne and crown, spurned them and their petition, and told them if they did not mend their faith he would "hurry them out of the land." But, nevertheless, in the next generation, the Puritan General Cromwell, hurled from the British throne the first-born son of King James, and threw his head as a sacrifice to the insulted and violated Constitution and liberties of England.

When, two years ago, there was pending before the American Congress the great question of the repeal of the Missouri Compromise, three thousand Puritan clergymen of New England, humbly besought your government that they would stop this enormous iniquity, and suppress this vast injustice. The leader in that outrage and that infamy, Douglas, of Illinois, cheered on by President Pierce and their triumphant party, insulted, in ribald tones, the Puritan clergymen and their petition, and told them that if they did not mend their piety, strenuous examples would be made of some of them. Nevertheless, in two short years, the American people exacted from that Democratic party the ignominious sacrifice of Douglas in their own Convention, as the wages of the political sin he had committed, and consigned him to the political death he had deserved. And his fellow laborer in political crime, President Pierce, received no better fate. Lovely and united in their political life, in their political death they were not divided. Now, that is what the

Republican party has done. And in every place in the Senate of the Union, for which the Free States have had a new election, it is come about that a man in favor of slavery has thus far fallen, and been succeeded by a freeman. And in Pennsylvania, on a joint ballot, another head of these betrayers of your public trusts shall fall. And by the control of the Senate of Indiana, a man now filling the Senate, the abettor and aider of this infamy, shall retire from his seat and it shall be kept open till filled by a supporter of liberty. Now what is the Republican party to do? The people want to know whether it is going to elect its President or not. What do we think of Pennsylvania, and what is to be said about it? The Democratic party is congratulating itself that it is not drowned *yet* in the political flood that is sweeping over the country. Now, that political flood is not the temporary swash of a transient influence, but it is a *true tide*, and as any of the Almanacs will tell you, it will be high tide till the Fourth of November. And if, in the full swell of this tide, some bad eminence should be left unwashed by its healthful waters, it will be time enough *then* for that bad eminence to congratulate itself on its escape. It all depends upon what the effect shall be, on the spirit of the people, of the State election in Pennsylvania, whether it is a prelude of disaster or victory. Let no man forget that the repulse of the Redan prepared the way to the storming of the Malakoff. Does the tide ebb? is the question. Are the legions broken in spirit? Has the tide ebbed in your bosom? (Cries of "no, no!") Is the spirit of the legions in New York quelled? (Cries of "no, no!") Then they are not in Pennsylvania, for they are men of like passions with you.

Now, gentlemen, there is a trial, a great trial going on before the people. And the tribunal is the assembled majesty of the free citizens of the United States. The culprit is the Democratic party, taken red-handed in the guilt of all the crimes, of all the shames, of all the sorrows of Kansas.

Now, we have a maxim in the law, that in every such august procedure there are two parties on trial, the criminal and his judge, and if the guilty man escapes the judge is convicted. So, if the Democratic party escapes your verdict, you are convicted as no better than it. This we all understand. We all remember a notable instance in Kentucky, where one, young Matt. Ward, murdered in cold blood a schoolmaster, who had laid his hand upon a younger brother in the just discipline of his school. Well, Matt. Ward was on trial, and a great many other people were on trial. But Matt. Ward escaped the gallows, and the rest were gibbeted by public opinion. Preston S. Brooks was on trial, and he pleaded guilty, and stood with shameless brow before the judge, and made a bold harangue to him, and suffered, for his sentence, a fine of three hundred pieces of silver—the price of American freedom of speech in the Senate of the United States—and paid it with a sneer. He knew his judge. Does the Democratic party know that the price of American liberty, sacrificed in Kansas, is worth only so many pieces of silver? Does the Democratic party know its judge? That is the question to be determined. I tell you the issue is put, the indictment is drawn, the Republican party is chief prosecutor, the proof is complete, the evidence is all in, the prisoner confesses, and now the question is whether all the intelligence, all the patriotism, and all the liberties of this people—free schools, free speech, free press, free literature, free labor—have made us all slaves? All the pomp and pageantry of freedom is but as sounding brass and tinkling cymbals, if the spirit of liberty is so far decayed among us as to leave this great treason unrebuked, this convicted criminal unpunished.



## VI

### SPEECH DELIVERED AT THE EIGHTEENTH WARD REPUBLICAN FESTIVAL, NEW YORK, FEBRUARY 22, 1860

#### NOTE

In the year 1860, and each year during the Civil War, the Republicans in New York City made special observance of Washington's Birthday, by public dinners, which were largely attended and were called at the time "Republican Union Festivals." On these occasions there were many speeches by prominent Republicans, all of a patriotic and serious nature. Mr. Evarts took part in at least three of these occasions; two only, however, of his speeches have been preserved. The dinner at which the speech that immediately follows was delivered was held at the Gramercy Park House. The speech delivered in 1862 printed at page 533 of this volume was at the Republican Union Festival held at Irving Hall under the auspices of the Republican Central Committees of the City and County of New York. This later dinner in 1862 was attended by about six hundred persons and among the speakers were Dr. Bellows, Horace Greeley and Henry J. Raymond. On both of these occasions Mr. Elliot C. Cowdin presided.

In response to the Sentiment:

WASHINGTON'S EXAMPLE—HIS LIFE WAS DEVOTED TO THREE  
GREAT OBJECTS, THE INDEPENDENCE OF HIS COUNTRY,  
ITS UNION, AND ITS FREEDOM. WHOEVER THINKS ONLY  
OF THE FIRST AND SECOND, FORGETTING THE LAST,  
OVERLOOKS THE COMPLETENESS OF HIS CHARACTER.

#### SPEECH

*Mr. President:—*

I feel greatly honored by the invitation of your Committee to take some part in the festival of friends and neighbors, associated in the same sentiments regarding the safety, the

honor, and the glory of our country, to celebrate as befits all its citizens, the great day which in the birth of Washington gave so large promise for the future of this nation and for the hopes of the world—a promise not too large for the achievements of his life and the influence of his character to redeem.

Mr. President, your sentiment has truly stated the great objects, the great purposes, the great achievements of the life of Washington. The freedom of his country, its independence, its union, were the purposes of his life; and by his life and its actions he accomplished them all. And you are right, sir, in saying, and saying fitly to the political temper of these times, that he who looks at his example or at the great acts of the American Revolution as being concerned wholly or mainly with the establishment of our National Independence and of the Federal Union, as objects distinguished from, or superior to, the *liberty* of the people, and of the nation, greatly errs.

Why, Sir, so far from this being the last, it was the first in the thought, first in the plan, and first in the action of Washington and of his contemporaries.

It was a struggle for liberty against oppression before the ideas of Independence or of Union had developed themselves. Why, Sir, after the battle of Bunker Hill, in '75, when Washington passed through the City of New York, on his way to take command of the forces at Cambridge, he was addressed by the Provincial Congress of New York. When they expressed their full assurance to him that “after success in the glorious struggle for American liberty,”—to result in an accommodation with the mother country—he would lay down the important military trust committed to him and re-assume the character of a citizen, Washington replied to them for himself and the officers who stood around him: “We shall most sincerely rejoice with you in that happy hour, *when the establishment of American liberty*, on the most

firm and solid foundations, shall enable us to return to our private stations in the bosom of a free, peaceful, and happy country." This, Sir, was a year before the Declaration of Independence; Washington was animated, as the whole country was inflamed, by the sacred fire of liberty, for the men, the women, and the children that occupied the territories. This was, then, the heroic position of Washington. And, for myself, I love to contemplate his attitude in the maturity of manhood, a British subject, but fighting for liberty, as a rebel, not against the Constitution of Great Britain, but against the tyranny of its King and Parliament.

Look at him as he stood avowing these sentiments, concealing nothing, with no equivocation. "Peace, peace, I hope, gentlemen, with you, shall come, but only when the establishment of American liberty on the firmest and most solid foundations shall enable us to return to our private stations in a free country."

How noble, as he uttered these words, does he rise before us, in mien and in feature! With how brave a heart, and with what power in arms, did he adhere to that purpose.

As the opening contest showed larger and larger dimensions to the question of freedom,—involving independence of Crown and Parliament to escape their tyranny—as a part of the energetic effort for liberty, and subordinate always to that, he counseled and fought for the Independence of the country. And when, the Independence of the country gained, its preservation, its maintenance, still always for the surer protection of liberty, demanded a nearer and clearer union of interest and of government, he, as the President of the Convention of 1787, completing its labors in the Constitution of 1789, consummated the last act in the great drama of American Liberty, thus "established upon the most firm and solid foundations" of National Independence and Constitutional Union.

Now, to Washington, to Jefferson, to the Congress of '76, and to the soldiers of the Revolution, Independence was but one, and Union was but another, of the firm and solid foundations of American Liberty; and except as the foundations of Liberty, they were nothing.

Mr. President, I will not recite the familiar story of the public life of Washington. As it began so it endured to its end, faithful and true to the love of liberty.

As he approached the close of his public career, by the completion of his second presidential term, he warned his countrymen of the dangers that beset *their liberty*, in the celebrated Farewell Address—quoted, now by the party that follows the single idea of Americanism, in those parts of it which relate to foreign and entangling alliances, and now by another party that would smother under the great sentiment of Union the still more sacred sentiment of Liberty.

What is his Farewell Address? What is its object and its purpose? and what stands in the fore front of it? It is the earnest hope “that the happiness of the people of these States, under the auspices of *liberty*, may be made complete by so careful a preservation and so prudent a use of this blessing as may acquire to them the glory of recommending it to the applause, the affection, and the adoption of every nation which is yet a stranger to it.” And when he approaches that portion of his address in which he expresses his farewell solitudes and gives farewell counsels, he speaks first of the love of liberty, saying: “Interwoven as is the love of liberty with every ligament of our hearts, no recommendation of mine is necessary to fortify or confirm the attachment”; and then he proceeds to enforce the prime necessity of maintaining the Independence of the nation, then feeble and youthful, against foreign interference, as the first and most dangerous avenue to the overthrow of its liberty; and then, he warns against all that shall tend to

distract or weaken the Union of the States, as the next formidable foe to the preservation of our liberty.

If the temple be thus sacred and deserving of every pious care, that its foundations should be kept secure, let us never forget that the deity that inhabits it is greater than the temple.

Mr. President, the last month of the expiring century put out the light of that life which, with steady and ever-growing lustre, and more than any other human life that ever shone among men, shed a benign influence upon the fortunes of his country, and upon the hopes of his race. The seal of death stamped his life as fortunate, and consecrated in the hearts of his countrymen a shrine that never shall be deserted.

Mr. President,—Sixty years have passed, the period of two generations has passed, and we to-day, amid the responsibilities of active life, are to look upon our country, its liberties, its independence, and its union, and see what are the issues in controversy for our time and for our action. Suitable as were the counsels of Washington, as to the dangers which might threaten our national independence in the feebleness of our youth, who shall say that *now* it is an important practical lesson or duty of ours to be solicitous about any assault upon our independence from abroad? Why, sir—until, within the last few months, we heard a base suggestion from Virginia that the horsemen of a foreign emperor should trample our sacred soil, and his fleet vex with their keels the free waters of our coast—no voice has dared to question our absolute safety against foreign power. Until from some more potential voice than that foolish Virginian's we have an invitation or a threat of foreign invasion, we need not fear danger to our national independence from any foreign source.

And then, Sir, as to the Union: two generations of men have grown up to know and to feel,—shall I say the *ad-*



*vantages* of the Union? No! it is putting it upon too low considerations to speak of the *advantages* of the Union; two generations of men have grown up to know and to love their country, and that country is the Union. Are we, for the first instance in the world's history, a people who rest their love of country and their jealousy for its integrity, upon a calculation of its *advantages*? Why, one might as well put his affection for his mother upon a question of gain, as to talk of his love of country being limited and regulated by a calculation of its advantages. No! gentlemen, the Union is our country; we have no other. What is smoothly called a "dissolution of the Union," is the dismemberment of our country. When dismembered, it is no longer the country of our love—but, bereaved and exiled, we are to find or make, as best we may, a new home for our affections.

But, gentlemen, while this sentiment of patriotism of a proud and powerful people thus guarantees the preservation of our country in its complete integrity, and while great lakes and rivers, and the intercourse of society, and the railroads and the telegraphs make it quite impossible,—if we were so poor-spirited a race of men as to calculate nothing but the advantage of preserving the integrity of our country,—quite impossible, I repeat, to dismember it, let me say to you that neither the power that makes us secure in our independence among the nations of the world, nor those causes which make sure as the ground on which we stand, and perpetual as the sky over our heads, the preservation of the Union, that none of these immense guaranties of independence and of union are, alas! in their nature or of necessity, guaranties of our *liberty*. Great nations have not always been free; none ever has been free till ours. Here, then, is the point of danger and responsibility, and here come in the duty, the solicitude, the interest, the vows of the Republican party. Their Independence being safe, and

their Union being safe, the *liberties* of these United States must and shall be preserved.

Mr. President,—What is the Republican party, and what are the public services it purposes?

Its purpose is to restore the liberties of the country threatened by the policy and purposes of the Slave Power, as carried out through the action of the General Government as administered by the Democratic party. That is the impending danger against which the Republican party has rallied; and as distinctly, let me say, Sir, under the name of Washington as the nation ever rallied under that name in the War of Independence. It is a mistake to suppose,—and all the people that so flippantly make the charge do not suppose so,—but it is a mistake to suppose, that the Republican party primarily or at all, is concerned with the civil condition of the black race within the States of the Union. We know our duties as men, and we know our duties as citizens. The Republican party is a *political* organization, distinctly and boldly assuming all political duties, but distinctly and honestly abstaining from all duties, in connection with this question of slavery, that are not political and are not constitutional.

Now, how is it that the threat to the liberties of this country has arisen? How is it that danger to our liberties may be expected and feared from the institution of slavery? Is it that our material strength or prosperity shall be impeded or overthrown by the presence of four millions of slaves in our population, already numbering twenty-six millions of free white people? No! But, gentlemen, it is that the essential idea on which that institution rests, is force, is power against right and against liberty; and when great political communities, as the States of this country, in which that institution exists and is cherished, have, as the foundation of their social structure, this principle of force and power, against right and against liberty, why,

the maintenance and confirmation of that institution cherish and expand the idea of power and force against right and against liberty; at length, the immense social interest, that rests upon this basis, of necessity urges and compels a wider and wider subjection of right and liberty to force and power. It is this that has required, and has effected the social subordination of the non-slaveholding white population of the slave States; that has, finally, insisted upon the complete suppression of liberty of speech, liberty of the press, liberty of religion, liberty of travel, and, in fine, of *common American liberty*, over one third of this nation. And when this original force is aided by this immense acquisition, it will extend, and, unchecked, will accomplish what it now distinctly attempts, the moral subjugation of the free States of this country, in order that the social institution of African slavery may be secure. Thus, step by step, grows the colossal power of slavery, which already, so bestrides this whole land, that we, the freemen of the free States, can only "peep about to find ourselves dishonorable graves," or manfully meet the controversy with the weapons that belong to it, and resolve, like Washington, that "not until American liberty shall be *re-established* on the most firm and solid foundations, will we return to our private stations, a free, a peaceful, and a happy people."

And now, gentlemen, the example of Washington is not merely a subject of commemorative reverence—it is a bright and living spirit that should be accepted and adopted as the guide and leader of our action in the warfare of politics, which belongs to a free people whenever public affairs require redress. The *sentiment* of the country has, by recent occurrences, manifested itself in the most laudable manner. The women of America have visited the sepulchre of Washington, and have rescued it from the neglectful hands of his kindred, and from the careless keeping of that State of which, alas, so much of the greatness lies buried in his grave. This is well.

But the spirit of Washington appeals to the *manhood* of the country, wherever it can be found, to rescue the great monument reared to his fame in the peace, prosperity, dignity, power, and liberty of the American people from the disgraces and the dangers that the neglectful hands and the careless keeping of that portion of this nation which claims him as nearest to them, have involved them and us in. The manhood of the nation is not all found in the Republican party, but all that there is in the Republican party is manful and brave; and if it retains its manhood and its valor, it will soon embrace within its numbers and its strength all the manhood and the valor of the American people. If it will follow its principles, follow its leaders, abide their fortunes, and consider nothing gained in political success in which a true leader of the forlorn hope does not himself plant the true standard of the Republican party upon whatever height we may gain, our cause, our triumph, our glory is secure; but if we fall short and waver, the liberties of the country will need other defenders, and will find them.

Now, Mr. President and gentlemen, I have but glanced at the topics which your toast suggests, and yet I have detained you longer than I intended, and longer than I should have done. I will close with asking you to do honor to this sentiment:—

*The Republican Party:* The example of Washington is its impulse and its guide to whatever labors and sacrifices may be necessary, to bring back the administration of the Government to the love and the defense of Liberty.



VII  
THE ISSUES OF THE DAY  
SPEECH DELIVERED AT AUBURN, NEW YORK, IN THE  
PRESIDENTIAL CANVASS OF 1860

NOTE

At the Republican Convention in Chicago in May, 1860 that nominated Abraham Lincoln as the candidate of the party for the Presidency, Mr. Evarts appeared at the head of the New York delegation in the interest of Mr. Seward. Mr. Seward had been, as he was at the time, the conspicuously great leader of the Republican party in the East, and his adherents went to the Convention in the confident expectation that the nomination would fall to him. It may fairly be said that, in the character of the men composing it, in the earnest and fervent devotion of its members to one great principle,—that of opposition to the extension of slavery, upon which all united, discarding for the time all discordant views,—in the wisdom of its choice which the future made manifest and in the political revolution of which it was the precursor, this Convention at Chicago in 1860 stands pre-eminent among recorded transactions in this country's political annals of the nineteenth century. The part that Mr. Evarts played as the champion for Mr. Seward was of course conspicuous.

Mr. Blaine in his personal recollection of the scene at Chicago thus speaks of Mr. Seward and the labors, in his behalf, of his leading supporters, Mr. Thurlow Weed and Mr. Evarts:

“When the Convention assembled, notwithstanding all adverse influences, Mr. Seward was still the leading and most formidable candidate. His case was in strong and skillful hands. Mr. Thurlow Weed, who had been his lifelong confidential friend, presented his claims, before the formal assembling of the convention, with infinite tact. Mr. Weed, though unable to make a public speech, was the most persuasive of men in private conversation. He was quiet, gentle and deferential in manner. He grasped a subject with a giant's strength, presented its strong points and marshalled



its details with extraordinary power. Whatever Mr. Weed might lack was more than supplied by the eloquent tongue of William M. Evarts. Seldom, if ever, in the whole field of political oratory, have the speeches of Mr. Evarts at Chicago been equalled. Even those who most decidedly differed from him followed him from one delegation to another, allured by the charm of his words. He pleaded for the Republic, for the party that could save it, for the great statesman who founded the party and knew where and how to lead it. He spoke as one friend for another, and the great career of Mr. Seward was never so illumined as by the brilliant painting of Mr. Evarts."

When the din and roar of wild enthusiasm, from the vast crowd of Mr. Lincoln's supporters that thronged the "wigwam," which greeted his assured nomination on the third ballot, had subsided, Mr. Evarts, standing upon a table in the Convention Hall, with every sign of the deepest emotion moved to make the nomination of Mr. Lincoln unanimous, in these few words:—

"The State of New York by a full delegation, with complete unanimity of purpose at home, came to this Convention and presented for its choice one of its citizens, who had served the State from boyhood up, who had labored for and loved it. We came from a great state with, as we thought, a great statesman, and our love of the great Republic, from which we are all delegates, the great American Union, and our love of the great Republican party of the Union, and our love of our statesman and candidate, made us think that we did our duty to the country and the whole country in expressing our love and preference for him. For, gentlemen it was from Governor Seward that most of us learned to love Republican principles and the Republican party. His fidelity to the country, the Constitution and the laws; his fidelity to the party and the principle that the majority governs; his interest in the advancement of our party to its victory, that our country may rise to its true glory, induces me to assume to speak his sentiments, as I do, indeed, the opinions of our whole delegation, when I move you, as I now do, that the nomination of Abraham Lincoln, of Illinois, as the Republican candidate for the suffrages of the whole country for the office of Chief Magistrate of the American Union, be made unanimous."

Bitter as was the disappointment of Mr. Seward and his followers over the outcome of the Convention, never for one moment did they hesitate in their hearty support of the party and its candidates in the Presidential canvass that ensued. At Auburn, the home of Mr. Seward, October 16, 1860, Mr. Evarts delivered the speech that follows on "The Issues of the Day."

### SPEECH

*Mr. Chairman and Fellow-Citizens:—*

It is not with any expectation of saying or doing anything in the canvass, for the party to which we are all attached, and for the principles, the triumph of which we deem essential to the safety and true honor of our country, more than any other citizen, who might be favored with your call to address you, that I now arise, and in the presence of this great multitude of sober and intelligent electors of the State of New York, to say, as briefly as may be, what seems to be pertinent and important in the very stage of the canvass which we have now reached.

By the form of the Constitution one simple duty is now devolved upon the citizens of this country—that duty is the election of a President and Vice-President. That is the extent and limit of our duty; and yet a large part of our citizens seem to be engaged in anything but that. They seem to suppose that the question which was before the Convention of 1787, and which resulted in the formation of the Constitution under which we now live, is ever open to this people, and that is "What Government they shall have, and whether they shall obey it?" Gentlemen, that question was settled for us, and it will remain settled long after we have passed from this stage.

Now, in preparation for the actual and practical duties imposed by the Constitution, I need not say to you, that if the Constitution is to be maintained and upheld, it is to be by the performance faithfully and intelligently of the duties

that are assigned to us under it, and their performance at the time and in the manner that the Constitution itself proposes; and I say that, in the preparation for the performance of that duty, various political parties have proposed for the suffrages of the citizens different candidates for the Presidency and Vice-Presidency of the United States. One Convention was held by the party to which you, for the most part, I take it, and I belong—the Republican party of the United States of America. In a Convention in which twenty-four States of the Union were represented, some partially, but still with twenty-four States, the Republican sentiment was fairly and honestly represented. They put in nomination for the suffrages of the people of the United States, dwelling wherever they may—in Maine, in Louisiana, in Georgia, in Michigan, in Oregon, or in California—Abraham Lincoln, of Illinois, and Hannibal Hamlin, of Maine. They are before the whole people, and there is nothing in the organization of the party, nothing in the principles that we propose, nothing in the character or purpose, the political conduct or history of our candidates, that should not as readily, as properly, as fairly invite a suffrage from the banks of the Arkansas, from the banks of the Columbia, as from the banks of the Penobscot or the North River.

Another political party representing in Convention twenty five States, many of them fragmentary, many of them with disputed, and some of them, it seems to me, with sham representatives, but yet counting twenty-five States in some form or other, has also put forth candidates before the people. These are Judge Douglas, of Illinois, and Governor Johnson, of Georgia. They, too, are thrown before the people, whose suffrages are asked in their support.

Another Convention, representing in a somewhat irregular form, but yet containing representatives of twenty different States of the Union, has placed in nomination two other citizens of great distinction in the past political history of

this country. They are Governor Bell, of Tennessee, and Edward Everett, of Massachusetts; and they, with what antecedents, what principles they possess, with what they have done, whatever they have promised, are before the whole people for its choice.

Another Convention, representing, in some way or another, by sham, substitute, fragmentary, or nominal delegation in respect of some,—yet representing nineteen States of the Union, have put in nomination Mr. Breckenridge, of Kentucky, and General Lane, of Oregon, who are also before the people for their suffrages. And now the single question is, “Out of these candidates whom will ye choose to govern, under the Constitution, the people of all the States for the next four years?”

Now it strikes us, at first, as something quite different from the ordinary posture of a canvass for the Presidency, that there are so many tickets in the field, and as quite singular in the history of all parties that in not one of these conventions was there a representation of the whole thirty-three States of the Union. In our own Convention, as I have stated, there were twenty-four; in the Douglas convention, made up as it was, there were but twenty-five; in the Bell and Everett Convention, there were but twenty; and in the Breckenridge and Lane Convention there were but nineteen. This, gentlemen, teaches us, upon distinct lines of fact, that are not to be disputed, that the sentiments of these people are divided, in no inconsiderable degree, upon subjects that are, or were supposed to be, connected with, or involved in, this canvass; for the failure of regular antagonism between candidates and of a fair and full collection of all the States of the Union, is an indubitable fact.

Now, gentlemen, there is one party which proposes to fulfil its constitutional duty—to proceed, without disorder and without confusion, without disturbance of the public peace or threats of the public safety, to the election of the candidates



that have been proposed for your suffrage. That party, I need not say to you, is the Republican party; but I must say to you that, so far as I can discover, all the other parties in this canvass are determined that they will not perform that constitutional duty in reference to their candidates, and are determined that we shall not perform it for ours. I state to you, as the distinctive feature of this Presidential canvass, that, whereas the duty is that a President shall be elected, and whereas we propose to perform that duty, all the politics, all the zeal, all the oratory, all the enthusiasm, all the promises, all the threats, all the hopes are, that we should be prevented from choosing our candidates; and that, so far as we can see, none of them propose to, or expect to, choose their own. Now, it is a little hard, gentlemen, that a party which quietly, soberly and faithfully sets about doing that which unperformed, strikes at the very foundation of a constitutional government—to perform that duty which, failing to be performed, leaves our government, until the defect be supplied, without a chief magistrate upon whom depends the entire executive course of the government—that a party such as ours, and so situated, I say it strikes me as hard that it should be stigmatized in all quarters as an enemy of the Constitution and the Union. It seems very odd to me that all these other parties, that propose to defeat the whole canvass and prevent the people from coming to a choice, should, on their various platforms, on various pretences, claim for themselves the conduct and character of faithful servants of the Constitution and protectors of the Union against us, the Republicans.

Now, gentlemen, mark how the matter stands. Upon what do they justify themselves in this course? That we are dangerous to the government, and that our success threatens the Union and the Constitution! What should be the way in which our opponents should act when a candidate is put in nomination whose success threatens the dangers which they



allege? What is the way to defeat him? Manifestly by putting in nomination against him a candidate whose character and whose principles will maintain the Union and uphold the Constitution. This is their duty. That is the theory of our government—this is the plan for upholding it. Now, can they make the sensible portion of the United States believe that they dread the success of the Republican party upon public grounds, and because of fear for the safety of the country, and they have not the patriotism, self-denial and largeness of views, to sacrifice personal interest and party success sufficiently to agree upon a man who can defeat the candidate of the Republican party? Why, if they could show us that by defeating our candidate before the people, they could at the next stage of a constitutional election in the House of Representatives be able then to agree upon a candidate, and thus avert these dangers to the Constitution and the Union, we might put more faith and have more patience with these, their views. But when they get to the House of Representatives, what they propose there is *not* to elect a President of the United States, which is the constitutional duty there to be performed, but to prevent the Republicans, who there are the largest power in the suffrages of the States, from electing their candidates; and thus the Constitution is to be again defeated, a duty avoided; and the truth is, gentlemen, that they propose to carry on this entire controversy, for these great offices, against the Constitution, against the Union, and, so far as their action goes, their success will be in the fact that for first time in the history of the country no President of the United States will have been elected anywhere.

Now, this is literally true. The whole scheme and plan is absolutely to defeat both plans of the Constitution for the election of a President, and then in the Senate where no President ever can be, or ever was intended to be, or ever by the Constitution was proposed to be elected, they shall elect a Vice-President and turn him into a President by operation

of the law. Gentlemen, which of these opposing forces (for there are three parties on one side and one on the other) understands the Constitution and its duty, and which of them proposes to fulfil it?

Now, in every canvass for the Presidency while the suffrage remains free, and no power overawes the exercise of it on the part of the citizen, there must be involved, to secure the attention of our vast population and to attract their confidence and their votes to the one side or the other, some great sentiment, or some great interest that shall be disseminated, spread and enforced upon the popular mind to divide the country, and so by the major voices to carry into power one or the other of the parties espousing one or the other of these sentiments. This sentiment, to be available for the purpose of a Presidential canvass, must be something that is vital to the Constitutional government under which we live, and as extensive as the people whose suffrages are to determine the question. No local matters have a proper place in the Presidential canvass—no State interests force themselves upon the attention of the people so as to disturb, or be of any use in, the canvass for the Presidency. We inherit the idea from our British ancestry, that with every general election for Parliament, whatever the purposes of the party may be, they must go to the country upon some vital interest of the British Constitution.

Now, there are two great sentiments to which the hearts of the people always have responded—to which they will respond in this canvass—to which, I trust, they will always respond while we are a nation, and neither our prophetic nor our imaginative vision carries us beyond that time. One of these is the great sentiment of liberty, to which we owe our birth as a nation, which shines in every line of the Declaration of Independence, the great statute of our national existence. The love of liberty pervades the people, and, touched by that chord, it throws on the one side or the other

of it the opposing parties, and who rallies in the loudest and clearest tones for liberty, will be likely to carry the day. But there is another sentiment which, as well as this one I have named, forms the spirit of the people; there is another sentiment, which is brought home in this pressure upon the consciences, the feelings and the intelligence of the people, and that is, what relates to the actual body politic, the national life, the Constitution of our liberties in the form and frame of the American Union. That is a sentiment which never can be, and never shall be disparaged in any canvass with which you or I, or any Republican, has aught to do. For, if liberty be the inspiring spirit of our national life, the Union is the bodily frame of that life itself, and without it we have no country. It matters but little to us whether our free, happy, powerful and prosperous national life suffers its death blow from a wound inflicted upon liberty, or from a wound inflicted upon the national frame of the government. Poland dismembered equally with France imperialized, has lost its national life. While we contend for the one sentiment with greater ardor, as it seems exposed, let us never doubt—let us never fail to admit, that with a nation that comes to its end when its frame is destroyed, whether the soul of liberty be separated from the body of the Constitution or the body of its Constitution be dissevered and dismembered so that liberty can no longer inspire and move it, national death and destruction are equally the result. Accordingly we shall find, gentlemen, that in these great agitations of an intelligent and free people, which form the working forces of a Presidential canvass, one or the other of these great sentiments is sought to be availed of for party success; I do not say dishonestly,—sometimes honestly, sometimes otherwise; for sometimes there is an enormous gap in the process of reasoning which suggests that certain principles will be promoted by the election of a certain candidate. When you see in a little petty town election, over a petty poll booth, that widespread premise and

this mean conclusion;—that “all the friends of the Union and the Constitution will vote for John Smith for Constable,” you sometimes conclude that there is, possibly, a gap which may excuse a friend of the Constitution and the Union from voting for Smith. But, nevertheless, some connection is to be preserved, and you must judge, and the people do judge, whether in the watchword and promises of a party, there is a fair and reasonable association with the success of the candidates.

Look at the various parties that are before the people. I will state with candor, and certainly with no intention to impute wrong sentiments, my views of the various parties, and I do say that we find arrayed in those mottoes and watchwords, sentiments which define and fairly represent the objects and purposes, the moving and controlling feelings that actuate the parties now before the people.

There is a small party which I have not yet named, and which has its candidates before the people—a party which seems wholly devoted to the inspiration of the single idea of liberty, and which seems to me to have failed in a true courageous comprehension of the duty of American citizens in this behalf. I am sure I don't know precisely by what name this party is called now; sometimes it has been called the “Liberty”—by its opponents it has generally been called the “Abolition Party” and sometimes the “pure Anti-Slavery Party.” Gerrit Smith, I believe, is its candidate for the Presidency. Now, I am inclined to think that, so absorbing, so controlling, has this party regarded the sentiment of liberty as running through even the abject class of our population in certain States of our Union, they really do give it predominance and pre-eminence over the sentiment of Union; and that, if they could have their own way and had to choose whether they would carry on to its final triumphant success, this principle of liberty at the sacrifice of the Union itself, they would be obliged fairly to say that liberty or dis-



union was the feeling and hope of their hearts. I don't criticise the sentiment. It is an honest, manly and brave sentiment, and whenever honest, manly and brave sentiments are avowed and enforced before the people by the fair arts of public influence, I have not a word to say against them, nor a frown to give to their supporters. I think, however, that the members of this party fail of their duty. They do not, perhaps, love liberty too much, but they do not appreciate the fact that the Union is at the bottom of liberty, all that we have or may have, and that that liberty which cannot be promoted in the Union cannot be promoted out of it.

There is another party which, I am bound to say, has given so unfortunate, and, as it seems to me, so monstrous a perversion to the sentiment of liberty, that it is willing to adopt, and really does feel the sentiments expressed by, the motto or watchword—"Slavery or Disunion." This party has for its candidates Breckenridge and Lane. Now, gentlemen, here is a party that discards and tramples on these two sacred sentiments alike. So absorbed is it in the special interests of property—or let them call it what they choose, I have selected their own nomenclature,—that they will advance it before and beyond either of the sentiments, "Liberty" or "The Union of the States." And they give us the proposition, I think, by their orators, by their political courses, by their platforms, and by their conduct generally, to understand that they now give in their adhesion to the interests of slavery so far, so vehemently, and so exclusively, that if their plans, their hopes and their sentiments be not adopted by this American people, and confirmed by the suffrages of the voters of the country, thus failing of slavery's prosperity and advancement, they will take disunion and its consequences.

Now, there is the Douglas party at the South and the North, which gives such a predominance to the sentiment of Union, and yet adhering to this great interest of slavery



which is in our politics, it may be said that they shape their formula in this wise: Slavery and Union; that is to say, not that they prefer slavery, but that the Union is a sentiment so strong and slavery an interest so strong, that they have not the courage, the faith, the reliance upon free principles sufficient to lead them to adopt more devotion even to the Union, and that Union and Slavery be voted up or down—to live and thrive, or dwindle and decay, as may be—is their contrivance for the safety of the country.

There is a party which is represented by the respectable candidates—Messrs. Bell and Everett—which, at least in the Free States, does not seem to put itself upon the same footing in these regards as the Douglas Party; though, so far as I can discover, the same political organization in the Slave States seems to have about the same sentiment of Slavery and Union, without Slavery or Disunion, and yet not coming to any higher standard than Slavery and Union. This party in the Free States, represented by Messrs. Bell and Everett, so far as I can see, is so absorbed and so subjugated to this sentiment of Union—a wise and patriotic sentiment certainly, when not pushed to extravagance—that it is willing to put itself upon a footing of political servility to the institution of slavery. Will it adopt, will it vindicate, will it espouse, as its choice and preference, for the sake of Union and what it deems peace, harmony and quiet, political servility, and surrender those free and spontaneous sentiments which all free men feel on this subject? But “political servility and Union” are what they are willing, in substance and effect, to present for the good of the country, and it is the best which they, at this juncture, can do.

Now, gentlemen, the Republican party, in my judgment, is ready to take hold with confidence, with firmness, with energy and with faith in the people and the principles of our fathers, of the two great sentiments, that divide sometimes, but really should always unite, the parties of the American

people, and to inscribe as the legend on its banners in this controversy "Liberty and Union, Now and Forever, One and Inseparable."

Do we flatter ourselves or disparage our opponents in this distribution and division of these great sentiments that are our common birthright? I know that Republicans are for Liberty and for the Union; I know that they ask no greater liberty and no greater power for themselves, in the regions of our country where they live, than they are willing to accord to their fellow men in every portion of our fair land. I know that it is a prevalent, fervent and predominant sentiment of the Republican heart, that, when we get outside of that natural feeling which we give to our birth-place, when we get outside of that allegiance which we owe to that political community known as the State in which we were born and in which we live—outside of that circumscription which nature and political duty draw closely around us—I know that there is not a Republican within the sound of my voice that does not rejoice in, and hope for, and plan for, and work for, under these life-giving sentiments of "Liberty and Union," the good of Alabama and Louisiana as much as for the good of Vermont or Michigan.

Our sentiments are not sectional. The life that we draw from them will be communicated to every portion of our land, wherever those portions of our land are ready to imbibe their life-giving influence. And we will disseminate them; we will uphold them; we will maintain the conflict in favor and for the good of all parts of the country.

It is said, gentlemen, that the Republican party, if represented rightly by this sentiment of liberty, and this love of Union, is a "one-idea" party. There is but one duty confided to us in this canvass, and that is the election of a President and Vice-President, and that duty performed, we shall have performed our obligation to the Constitution of the United States. But let us see whether we are a "one-idea"

party and whether it is a reproach. If it be founded on an idea, it is an idea large enough, when divided up, to furnish the antagonistic principles of three other parties. That is something in size and bulk for an idea. Is it then to be objected to, that it is not an idea that is in the people's heads and hearts? Gentlemen, who make parties, platforms, and combinations, and who furnish sentiments? One would suppose that they were made to order by some superior power, and were let down upon the people to be adopted under the direction of leading politicians. The people have the ideas and the sentiments, out of which moral forces and politics are directed and controlled. And when a party on one side, or on the other, has the ideas and the sentiments that the people have in their heads and hearts, it has enough for that canvass. Some of our respectable friends, who don't like agitation, are constantly asking us, "Why will you divide the people on the question of slavery? Why don't you divide them upon something that they all agree about?" This is all childish nonsense, and he who thinks that he can by whistling raise the wind to carry his craft across the Atlantic, will think that in political juntos you can agree to suppress a sentiment or an idea, and get up some other for popular use. So much for that.

But the idea is a large one, and it is connected inseparably with these two sentiments of our love of Liberty and Union, and, therefore, the purposes and principles of the Republican party do rightly invoke these united sentiments. The idea, gentlemen, is that slavery whether it be good or bad, politic or pernicious, is local, and that free labor is the national basis upon which we build up wealth and power. Now, that is the idea, and it is an idea large enough for any nation to have for a four years' canvass.

Let us see how this question arose—how much of fact, and fact that cannot be disfigured or kept out of view there is in it, and about which all must agree. The great fact is, gen-

tllemen, that the population of our country includes within its bosom four millions of persons of African descent. There is the fact. No Southern statesman or politician can disguise it; no Northern statesman can influence or pervert it. Here they are. What have we to do about them? I mean "we" as a nation—you and I in our political duties, not in our philanthropy, with our sympathies or our moral and religious influences; but what have we to do with the fact politically, in our duty as citizens under the Federal Constitution? That is the question that divides the country.

In the first place, gentlemen, these blacks are for the most part in the condition of slavery. They have derived that condition, and it is maintained over them by the force of the laws of the separate states in which they live. I need not say to you, gentlemen, that we should have no confusion of ideas about what liberty and slavery are. They have nothing magical about them. The difference between them, wide and deep as it may be, exists wholly by positive law. Why are we free? Why do we call ourselves free? What do we mean by freedom, except that we live in communities whose laws leave us free, as God made us, deducting only that small contribution from individual liberty which is necessary for the common right and the common safety? It is in our laws,—in our magistrates who protect those laws,—in the processes of those laws which give to the feeblest the support of the whole community in defence of his rights,—that we are free-men. Sir James McIntosh, than whom there never was a clearer thinker in these matters, defines liberty as a "security against wrong."

That is liberty. Think it over as to what is your condition of liberty. It is security against wrong. You are permitted to work out your sentiments and the purposes of your nature, as an individual, against wrong and oppression. Now, slavery—slavery is a word that trips lightly on the tongue,—but slavery is nothing but the local condition in which the

slaves are, by power of the government under which they live and which controls them;—and perhaps as ready and complete a definition of slavery as has yet been given would be the converse of the definition of liberty. Slavery, gentlemen, in essence, in practical abjectness, and in misery, is helplessness against wrong, and that is the legal condition in which it is placed in the communities where it is cherished and maintained as a social institution. I need not say to you that, as a political duty, we have nothing to do with the passing of the laws in the states where slavery exists—and that ends that subject. Where, then, does the conflict arise which causes this diversity of sentiment and this conflict of political action? Why, when this black population is to overflow the bounds of these separate states by the laws of which its condition is fixed, then it becomes a question for those into whose territory it flows to say what should be done with it; and if it overflows into the territories of the United States of America, then you and I and every citizen has a political responsibility and a political duty because then it is beyond State jurisdiction, and is within the jurisdiction of the United States of America. And as it is a condition that it must have the support of the law to exist in fact, it must be governed and regulated by the laws of the government having jurisdiction,—the government of the Territories into which it overflows.

Thus, you and I, in common with the citizens of Alabama, Missouri, of Massachusetts and Illinois, have our say, our opinion, our votes, our action and our principle upon this subject. Now, can anyone gainsay this? Gentlemen, as I have said, the idea being that slavery is local, and not national, the moment you remove, or attempt to remove, this African population out of the State in which they are held in bondage, into your Territories, under your governments, under your laws, the determination whether that population shall be held in slavery,—kept in the condition of help-



lessness against wrong,—or whether that population comes into the Territory to be lifted into freedom and protected by security against wrong, is precisely the duty and the action that you must meet, whatever the consequences, under your duty to the Constitution and in maintenance of your share of the citizens' protection and defence of the government.

Now this conflict has been said to be irrepressible, and various authors of this doctrine of the irrepressibility between the interest of slave labor and of free labor have been brought before the notice of the people. Governor Seward was reproached with having in 1858 invented this doctrine of an "irrepressible conflict." Since that time Mr. Lincoln has been put forward as the candidate of the Republican party, and so that reproach, if it be a reproach, as our opponents intended it, has been transferred to Mr. Lincoln, and they say that he, two years earlier than Governor Seward, was the author of that doctrine.

Well gentlemen, I happen to have a little extract from a newspaper which will show you another origin for this doctrine of the "Irrepressible conflict" between the forces of slave and free society. The "Richmond Enquirer," before Seward and before Lincoln, set down this proposition—

The opposite and conflicting forms of society cannot, among civilized men, coexist and endure. The one must give way and cease to exist—The other become universal. If free society be unnatural, immoral and unchristian, it must fall and give way to slave society—a social system as old as the world, as universal as man,

And we take that issue. If free society is "unnatural, immoral and unchristian," which the Virginia editor says it is, then, by the highest duty to ourselves and to all men, we must be turned into slaves. There certainly is an "Irrepressible conflict" stated.

Well, gentlemen, these may be called the *observers* of this "Irrepressible conflict" between the forces of slave labor and

free labor—between society respectively built upon these two opposite systems; the *Author* of that conflict is He who mysteriously framed this union of the body and the soul which constitutes the human race. For, in the last analysis, the difference between slave labor and free labor is this,—that a power superior to the individual man seizes upon him, degrades his labor, stimulates, enforces, and employs all his energy which allies him with the brute, his muscles, his nerves, his power as of oxen and of horses, in the labor that the slaveowner gets by tasks from his abject dependents. Free labor is informed by man and directed by will. It is the application of the whole man by himself—the master of his own limbs by the intellect and the passions which God has given him with which to rule his own body. And it is quite obvious that so long as there be these two methods, by one of which man is degraded to the level of the brute, and his labor to the level of brute labor, and by the other of which he is the master of his own body, and is lifted up by his own effort into moral, intellectual and social development and improvement, they “cannot” (as the editor of the “*Richmond Enquirer*” says), “among civilized men, coexist and endure.” Let us see why.

Let us see what are some of the trivial objections which are made sometimes by honest-minded men. “What is the objection,” they say “that your free people of the North have to going into a territory and running the forces of free society parallel with the systems of slave labor?” Why, the moral conflict between them is utterly incompatible with the peaceful coexistence of the two together; I mean while they run on as forces conflicting and striving for the mastery, for I admit that the actual condition of the slaves, when it is settled that the institution is to pass away, may temporarily be left subordinate to and controlled by the great forces of free society. Why, gentlemen, just take the two systems of the chaste Christian single marriage and that of polygamy—the system

of our society which treats women as the equal, the sharer of the heart of her husband, the mother of his children and the part of his household—and the system of polygamy, that treats her as the slave of his passion and makes her subject to his caprices and then ask the free people of the North and the free people of the South (for on this question there is no difference of opinion between the two sections) what objection there is to polygamy occupying a territory, and why they cannot go and live side by side with this institution. Gentlemen, nature is stronger than politicians. She will have her own way. Now, practically, is not this so? How happens it that the overflowing population of the sterile soil and inclement climate of the New England States, and of this, and other Northern States have in the earlier days,—when the impenetrable West imposed such barriers to the progress of civilization—how happens it, I ask, that that overflowing population did not turn down into Virginia, the Carolinas, Alabama and Georgia? The laws of our country extended over the whole, the genial climate and fertile and prolific soil invited the industry of the free. Why did they not go there? Why did they shoot clear across the continent, as if there had been a wall of fire drawn on the Northern boundary of Virginia? And why, not until they had occupied to the Pacific Ocean, did the returning wave seek to encroach upon the line of territory that slavery had claimed for its use?

Now, gentlemen, you see that this is not a fictitious issue. It is a real issue. It is deep, permanent, as necessary as the principles of human nature. You see that besides being a question of political duty and political right, in which we are concerned, it is a question whether our Territories shall be cultivated by free or by slave labor; it is a question of vital importance to the overflowing tide of our population, because the presence of slavery, as an established and controlling institution, necessarily drives the free population away from the reach of it.

And, gentlemen, it happens to be a little odd, with these sentiments, that the most extraordinary charges are made upon the Republican party. Our fellow citizens of the Slave States tell us, in justification of the system of slavery, that it is the only system compatible with the coexistence of the two races in the same community—that is,—their coexistence in at all equal numbers. That may be. We do not dispute with them on that point. But we say, that being admitted, they cannot extend themselves into the Territories of the United States, and carry with them their black population, without having slavery maintained and protected. Well, our principles are opposed to the maintenance and protection of slavery in the Territories. That we avow; that they complain of; but that they understand. Yet you will find in the organ of opinion in the Southern States, and in their organs having affinity with them in the Free States, they charge that the Republican party is in favor of Africanizing America! The policy and principles of the Republican party to keep slaves out of the Territories, in the opinion of our Southern friends, is to keep the African race out of the Territories, while their principles would carry it in. And yet they say, and while they charge it in effect as a fault of ours that our principles would fill the Territories with white people and would keep the slaves out, that we are in favor of Africanizing the continent! The extension of the institution and of the population would be promoted and advanced by the policy and principles of the parties which are opposed to us, and we who stop the tide cannot be accused of favoring the extension of that population.

And here, gentlemen, I may notice a proposition which has been used by many persons to soothe their own consciences for their indifference on the subject of slavery, and that is, that the carrying of the institution of slavery into new Territories does not increase the number of slaves. They are opposed to increasing the number of slaves, but they say

that the extension of the institution does not increase the number of slaves. A very respectable, intelligent gentleman whom I ever desire to mention with honor, Mr. James T. Brady, the candidate of one of the divisions of the Democratic party for Governor of this State, in a public speech that he recently delivered, suggested that idea. Why, gentlemen, what can be more abhorrent to the plainest principles of social economy than that the extension of the area over which a race is distributed does not tend to their increase. Whenever Mr. Brady will be of the opinion that the descendants of Irishmen are no more in the world than they would have been if they had always been confined within the limits of Ireland; whenever we shall feel that there are no more descendants of Englishmen than if this wide continent had not been opened to that population, but they had all been confined within the island of Great Britain; whenever it shall be true that there are only just as many Morgan horses in the world as if they had always been confined to farm work in Vermont, and had not been distributed over the country for the luxury of its population everywhere; whenever it shall be demonstrated that there would be only just as many perch in the world if they had always been shut up in Owasco Lake, and not distributed in rivers and lakes everywhere, then, I say, there will be something in the idea that the extension of slavery into Territories does not tend to increase the number of slaves.

And now, gentlemen, there is another question which I desire to meet fairly and squarely, and that is the imputation against the Republican party as favoring negro equality. I take it that the Republican party, and that every man, whose mind and nature have been developed by education and Christianity, feels that, because of the actual condition of feebleness, of ignorance, and of degradation of anybody, he never gains any right, even by the weight of his little finger, to add to that depression and misfortune. And



I take it that it will be a long time before it will be a mark of nobility of spirit and manliness of character to add to the misfortunes and feebleness of the humble and distressed. I believe that it is a fundamental principle of civilized society and Christian religion that as before the eye of God, so in the judgment of the law, all men who are men are to have equal rights of protection. Now, when I am making this suggestion about the Republican party's notion of the equality of the negro, God forbid that any man should say that I, professing, as I do, to speak with deliberation, with circumspection, with a just regard of duty to myself and to you, should ever be quoted as opposed to that kind of equality to the lowest and feeblest of the human race. But let us look a little at this subject of negro equality from points of view which do not occur to our Southern friends. They do not complain that the law which excluded slavery or slaves from the Territory would prevent white men from going there, except in a particular relation, to which I shall advert. So far, then, as whites are concerned, the white man who chooses to go alone from South Carolina or from Alabama, or from Kentucky, would have just as good a chance under this principle of exclusion of slaves, as a man from Vermont, from Pennsylvania, or from Ohio; but they say we white men of the South cannot go into a new territory without our blacks carrying us. And there is the difficulty. Now, which is the master of the situation and of the future of that man—the white man or the black man who must carry him? You remember how Benjamin Franklin aided the diffusion of universal suffrage, when there was a property qualification which he wished to abolish, by the suggestion he made in regard to the property voting rather than the man. He says, "You require a man to possess fifty dollars worth of property before he can vote." Now, to-day, a man professes himself to exercise the right of suffrage. He is asked whether he has fifty dollars worth of property. He

says, "Yes—I have a jackass that is worth fifty dollars." He votes. Well, at the next election the man comes up again, but his jackass having died he cannot vote. "Now," as Dr. Franklin asks, "which was it that voted the year before, the man or the jackass?"

Now, gentlemen, pursuing the tenor of these suggestions, if in the Southern States they have a class of the population, in subjection to whom the movements of the white people must be made, it is very easy to see that in certain most important relations this population is the master of the movements of the white.

But, again, they say, that, in their estimation, a mixed population of whites and slaves, as a unit, is a better population than an equal number of people on one side of the line all white. Well, gentlemen, let us suppose there are one thousand white people forming a little community in the State of Ohio, and that on the opposite bank of the river, in Kentucky, there is another community made up of five hundred whites and five hundred negroes; and this latter community they say, is a stronger, wiser, safer, and better community than the one thousand on our side. Well, gentlemen, when some British officers were trying to excuse the defeat of one of their frigates by an American frigate having a smaller crew, the Englishmen retorted by saying that two-thirds of the crew of the American ship were Englishmen and Irishmen. "Yes," said the American, "and it was just the other third that made the difference." Now, take from the one community, of one thousand white men, five hundred white men, and you have five hundred white men remaining. But of the other community of five hundred white and five hundred black, you take the five hundred white and you have five hundred blacks remaining. It is that dilution of the black population that they consider a larger and better element of society than an equal number of white people of one side. That is not only negro equality but negro superiority.

We submit to the argument without ill-nature, because we are satisfied that it is quite the other way.

Now, gentlemen, this subject of equality has been broached on the opposite side, by a very distinguished gentleman in the Democratic party, a very eminent lawyer and a very close reasoner—I mean Mr. Charles O'Connor. He, in endeavoring to attract the attention, favor and support to the institution of slavery from the people of the State of New York, put to them this proposition: "The condition of Slavery at the South is precisely, in the eye of the law, the condition of your sons here, while they are under age; the only difference between the lad of twenty at the North and the slave at the South being that the lad is to be emancipated at the age of twenty-one, while the slave continues in the same condition for life." This monstrous proposition, gentlemen, is not for me to dissect or refute. Its absurdity is obvious; but let me say to you, gentlemen, when they are using this reckless argument, that it is just as much an assertion of the equality of condition to say that the white man is on the same level with the black as it is to say that the black is on the same level with the white. There is no difference in that respect. So you see, gentlemen, that none of these efforts to divert the public mind and the public attention from the real inquiry will avail anything. We are a political party. We act in our Federal relation within our political duty. We act upon the subject of slavery within the Territories according to our notion of the safety and true development of our country.

Now, there being this conflict, let us see who it is between. The ordinary phrase for it is that it is between the North and the South. Between the North and the South? This "irrepressible conflict" but the occupation of the territory by these contending tides of population? Well, gentlemen, there is great danger in generalities. What is the North? What is the South? Where is the line drawn? The phrases

have no meaning in our political constitution. There are no such powers. It answered very well in geographical description, while the population of this country was confined to the margin of the Atlantic Ocean. But what has become of the division between the East and the West? We reach now from shore to shore of the two great oceans of the world. We have the great Mississippi Valley. We have a vast region of interior territory. Hence the division between the North and the South does not express the conflicting parties at all. Then they will say that it is between the Slave States and the Free States, but that is not so. If it were so, why then, under our system of politics, which gives the predominance of Federal votes the power of determining the question, it would have been settled long ago: there are 120 votes from the Slave States and 183 from the Free States, and it is very easy to see that a conflict dividing the parties of the country by that line, would be very soon ended.

Nô, gentlemen, these are cunning disguises by which this conflict is sought to be made geographical, or sought to be circumscribed on the one side or on the other by the demarcation of State lines. It is not so. The controversy is between the friends and supporters of slavery in the United States of America, wherever they are, and the opponents of that institution, who regard it as dangerous and injurious to the common benefit of the country. That is it. You cannot gain the credit of a great division of the country, or of great bodies of states. Look at it. I take it that, in our midst, Mr. O'Connor is as great an advocate, promoter and defender of the institution of slavery as Mr. Yancey, who lives in Alabama. I take it that Mr. Cushing,\* of Massachusetts, is as vehement, as turbulent, as obstreperous an advocate of slavery as Mr. Toombs, of Georgia. I take it that Governor Seward is no more fiery or no more bold an opponent of the extension of slavery than Cassius M. Clay, of Kentucky. I

\* Caleb Cushing.

take it that Mr. Everett betrays the hopes of freedom by his timidity in the very citadel of Boston, and that Winter Davis beats down the proud pretensions of slavery in the City of Baltimore. Nay, St. Louis is to-day a more Republican city than New York; and Baltimore, considering its position, is as bold at least as Boston. Now let us understand how we are grouped. So, too, there are large classes of our population—the slave traders of our Northern ports—the merchants who fit them out—their crews, and all the hangers on of that interest—the great share of the bankers, the great share of the moneyed interests of the Northern States—these are combined with the interests of the slaveholders in the support and maintenance of slavery. A great many of the farmers, a great many of the honest, plain, poor, but hardy, mechanics of Virginia, Maryland, North Carolina, Kentucky and Tennessee, are opponents of slavery and slavery extension, and they act and feel with the Republican party.

The division is of sentiment and of opinion and not of sections, or of States. Now, that being the division, you will perceive that whether or not one sentiment or the other can make headway, develop itself and find speech and act politically for the furtherance of it, in one or the other part of the country, must depend upon the laws, upon the habits and upon the feelings of the people. Thus here, as I have stated, distinguished men advocate slavery openly and fairly. Mr. O'Connor, to whom I have alluded, stated to a large New York audience that the question was, whether slavery was just or not—that if slavery was just, then they were right on their side—that if slavery was unjust, then Governor Seward and all his followers were right. He laid down the proposition to be enforced and accepted by us, that slavery was just, benign and beneficent; that only those who were of that way of thinking should sustain the Democratic party, and that all of the opposite opinion were rightfully on the Republican side. Mr. O'Connor is a clear thinking, honest man, who



utters his sentiments freely on these questions, and no one attempts to stop him from exercising his right of speech. But how is it in the Southern States? Do they enforce their views in the general way of argument, suggestions, and fair and honest influence? There was an humble mechanic, a man of Irish origin, who went to the State of South Carolina to work as a bricklayer in the capital of that State—I mean Thomas Powers. He ventured a suggestion that Slavery was not “just,” not “benign,” not “beneficent”—an honest opinion, doubtless, and one which he gathered from observation. What were the arguments that were used with him to satisfy him that he ought to change his opinion? Why he was taken—he was beaten with many stripes until the blood ran; he was tarred, he was feathered, he was starved, he was insulted, he was hooted from the community; and thus he was convinced, I suppose. The stripes exhibited to him the manifest justice of slavery, the boiling tar exhaling the odor of its benignity and the feathers descending in a gentle mantle of its beneficence. Now, Mr. O’Conor and Mr. Powers, running in different lines of reason and argument would very likely come to opposite conclusions. No, gentlemen, our Constitution makes our suffrage free—leaves it to be settled by honest argument by all the arts of fair and honest influence; and whenever the speech and the facts, the conduct and the character of the Republican party can be made known in the communities that cherish and defend slavery, you may rely upon it that there will be as many to uphold and defend free labor there as there are to defend and protect slave labor here.

Another very cutting sarcasm that we suffer from, from the voters of the States that have established and now maintain slavery, to uphold their favorite institutions, and from the Democratic orators too, is, that we are a hypocritical race; that we are fond of money above every other thing, and

trample, for gain's sake our principles under our feet; that we fit out slave-traders, that our merchants furnish the means, the credit, and the insurance; and they say: "Look, now, at the North, which professes to be opposed to Slavery, and yet furnishes the means for this abominable traffic." Well, there is no fusion. It is not the North that is opposed to slavery; it is the people, who have the sentiments of freedom who are opposed to slavery; and those who have not those sentiments are engaged in anything, if you please, that the law will tolerate, or that the law will wink at, in advancement of slavery. But let me ask that Democratic orator, how many of those people that he thus classifies and stigmatizes, does he suppose vote the Republican ticket? Whenever Republicans are caught in the service of slavery we shall hang our heads! But when the orator who denounces our wickedness, counts among the voters of his party, captain and crew, the owner and merchant, the banker and district attorney, the officers and marshal, and the whole concern engaged in prosecuting, promoting, defending, protecting or winking at, the abomination, it is for them to cease their accusations.

Now, gentlemen, after all, coming back to the Territories, the question is, are we planning, are we executing any oppression on our fellow citizens of the Southern States by maintaining the rights of free labor, and by our proposition that the Territories shall be occupied by free laborers, by free citizens from Georgia, South Carolina, from Massachusetts, from New York, and where not? That depends, it is said, upon the Constitution of the United States of America; and the propositions of the different platforms on this subject are put forth by the different parties to gain the adherence of the people. I will ask your attention first to the propositions of the different sections of the Democratic party, and then to our own, saying first a word or two on the platform of the Constitutional Union party, which has given us no

interpretation of the Constitution, and no views concerning it. It is a mistake to suppose that the Constitutional Union party have confined themselves to declaring as their only sentiments, "The Union, the Constitution, and the enforcement of the Laws." They have gone further. They have said that it is the dictate of duty and patriotism to have no other sentiments at all.

None, whatever, can we have, except what are embraced in the formula, "The Union, the Constitution, and the enforcement of the Laws." Well, "Many men of many minds," and so long as constitutions, governments and laws are open to construction and opinion, if you want us to know what your opinions are, you must use some other phrase or terms than those which are common to us all—"The Union, the Constitution, and the enforcement of the Laws." We all go in for that.

Now, the Breckenridge party says this:—

That, the Government of a Territory organized by an Act of Congress, is provisional and temporary; and during its existence all citizens of the United States have an equal right to settle with their property in the territory, without their rights either of person or property being destroyed or impaired by Congressional or Territorial legislation.

That it is the duty of the Federal Government, in all its Departments, to protect, when necessary, the rights of persons and property in the Territories and wherever else its Constitutional authority extends.

Now, gentlemen, you will notice that there was the same indisposition with the framers of these resolutions to mention the word "slavery," that is known to have prevailed with the framers of the Federal Constitution. They determined that it should not be used, and for the best of reasons. The abhorrence of slavery, the estimate of it as a temporary, exceptional, foreign institution, made our fathers sedulously to omit from the whole framework of the Constitution the

name of slavery and slaves, and the fear of an intelligent free people led the framers of the Breckenridge platform to leave out the word "slavery," and to prevent it from peeping out in any line or syllable. It was only by covering up the question under the abstract idea of the rights of property that they could get a hearing, and secure anything but the merest indifference and contempt, for their suggestion that the Constitution of the United States created, protected, defended, or required from Congress the creation, the protection, or defence of slavery.

Well, now if you will take the Republican ideas about what is property under the Constitution, and what are persons under the Constitution, we shall have no difficulty in saying that it is the duty of the Federal Government to protect the rights of persons and property in the Territories of the United States.

What is the Republican doctrine about protecting the right of property and persons in the Territories? The eighth section of the platform adopted at Chicago says:—

That the normal condition of all the Territory of the United States is that of Freedom; that as our Republican fathers when they abolished Slavery in all our National Territories, had ordained that "No person should be deprived of life, liberty or property, without due process of law," it becomes our duty, by legislation, whenever such legislation is necessary, to maintain this provision of the Constitution against all attempts to violate it; and we deny the authority of Congress, of a Territorial Legislature, or of any individual, to give legal existence to Slavery in any Territory of the United States.

Now the Republican doctrine is that by the Constitution of the United States slaves are persons and are not property; that whenever they are named in that instrument they are so described as persons, and that, in the spirit of our ancestors, and in the records of their deliberations, it is manifest, everywhere, that they would not admit into that Constitution even the word "servitude," much less "slavery," but



only the word "service"; and the only stringent clause of the Constitution is that which looks to the rendition of escaped fugitives from service. But I do not hesitate to say that the Breckenridge proposition entirely fails in covering the institution of slavery, because they put themselves upon the general notion and name of property; and the Constitution of the United States nowhere, not in any line, not in any syllable, not by implication, not by possibility, stamps the character of chattel property upon men, to be protected, like bales of goods and hogsheads of sugar, under the Federal jurisprudence, as property. But if the Breckenridge proposition means to say that Congress and the Territorial legislatures have no right to pass any laws impairing the rights either of person or property, in the general and extensive sense in which they use it, I do not hesitate to say it is the sheerest nonsense in the world. I should like to know what the whole function and duty, what the whole province, what the whole scope of enactments and of legislation are but the subjects of persons and property? I should like to know what there is in New York to legislate about if it is not persons and property? I should like to know if the government that governs cannot legislate about persons and property? Now, to say that the Congress of the United States and the Territorial governments they create have sole sovereignty over the territory, and yet cannot legislate about persons and property, why, in the name of Heaven, what can they legislate about? You must either have a government or no government. If you have got a government, it can govern. Why do they not put their language so that it will read that, though it is a government, and can legislate about persons and property, it cannot legislate about slaves? Why don't they say that slaves are neither persons nor property but are mixed up of both—or take some other dogma, by which to make some magical exception of slavery from the purview of legislation? It is a monstrous absurdity that a government



which rules a Territory does not include dominion over slaves and their relations as well as white men and theirs—that the government of a Territory which, by its laws and their administration in the course of justice, may affect every white man within it, cannot, by any enactment, alter the condition of a slave for a single hour, or, to a hair's breadth, ameliorate his condition.

We have a government or we have not a government, and slavery being a matter of positive law, is subject to the control of Congress. It is in these generalities where lurks the fraud that our opponents practice upon the intelligence of our people. The Douglas platform is neither more nor less than this:—"Inasmuch as differences of opinion exist in the Democratic Party, as to the nature and extent of the powers of the Territorial legislature, and as to the powers of Congress under the Constitution of the United States, over the institution of Slavery within the Territories—*Resolved*, That the Democratic Party will abide the decisions of the Supreme Court of the United States on the questions of Constitutional Laws."

Well, gentlemen, there is no objection to that. There is nothing Anti-Republican in that avowal. The Republican party not only leaves slavery but all their rights about persons and property before the Supreme Court of the United States, when they come before that tribunal. So, you will see, that our friends have either not spoken explicitly, definitely and with frankness in the statement of their views, or else they have been unfortunate in the selection of a penman or the selection of words to express their meaning; for the Republican party accepts the United States Courts as the lawful expounders of their law in cases that come before them. And if Congress passes a law excluding slavery from the Territories, and a slaveholder takes his slaves there; and if a Republican lawyer brings a writ of *habeas corpus*, and a Republican judge says the slave is free and you then go to

the Circuit Court and a Republican Circuit Judge says also that the slave is free; and if you then go to the Supreme Court of the United States, and that Court says the law is unconstitutional and the slave is not free, so long as the government stands, so long as the judgment in that case stands, it will be respected, as it was in the Dred Scott case which made Dred Scott a slave until he fortunately died. But, on the other hand, if Congress passes a law that slavery shall be established in the Territories, passes a slave code and the slave is there held, and a Republican lawyer brings a suit of *habeas corpus*, and a Democratic judge in that Territory says the law is constitutional, and the slave is a slave, and a Democratic Circuit Judge, on an appeal, says the same thing, and the Supreme Court of the United States says that the law is unconstitutional and that the slave is a free man, then let the people submit to the Supreme Court of the United States. This idea of law and justice—reverence for law and justice—being an element to bind the consciences of the good, and never an element strong enough to control the wicked passions of the bad—is a sentiment inconsistent with civil government and must be frowned upon everywhere.

When the Supreme Court of the United States makes this judgment in favor of liberty, then let it be obeyed. Now, gentlemen, how does it happen that the Supreme Court is such a favorite repository for the settlement of the question of liberty and slavery? If you will notice, you will see that the Democratic party, or the slaveholder's party, has shifted a good deal as to where it would trust this question. In the first place, Congress was the place to determine whether slavery should or should not exist in the Territories. Large Democratic majorities, subservient Northern constituents unshamefaced representatives, made Congress a safe depository for the question of slavery. But all at once the Republican sentiment found strength enough to express itself, and to control one branch of Congress, and then our Southern

friends thought that Congress had no power over the question of slavery in the Territories. Not they! The people of the Territories had the power under the "great principle of squatter Sovereignty"—the noble principle of the people controlling their own institutions, and Kansas was just the place to try it. Why did this principle suit Kansas? Why, because Kansas had a barrier of the Slave State of Missouri between it and freedom. The slave interest had free avenues to it for the overflowing dominion of slavery, and they had violent men and violent passions, and wicked purposes, as power always has when it contends against right, and squatter sovereignty (not as Mr. Douglas now puts it, giving the sovereignty to the people when they are a grown up community) meant, according to the pure Southern doctrine, that the first comers settled the question of slavery or no slavery, because Missouri could get there sooner than New York or Massachusetts. That was all very well. But we are a free people, and we can move, whether black men will carry us or not—and though South Carolina and Missouri go there first, Massachusetts and New York stayed there longest. When, behold the change in the views of the slave holding party!—"Was there ever such an abominable doctrine," they said, "as Squatter Sovereignty? It leads to all manner of violence and irritation between honest populations, turning them into voters and fighters, when they ought to be plowing and tilling the fields! How can American liberty stand the shock of Squatter Sovereignty?" But we told you so, gentlemen—we told you that Congress was the place to fight it out in words, where you could vote and we could vote, and the sober, honest people, who sent us, were waiting for the decision. We ask them to take the matter back before Congress. "Take it back!—it is the unsafest and most unconstitutional place in the world! If you attempt to pass a law in Congress to abolish slavery in the Territories, we will dissolve the Union. The Supreme Court is the place."

Now, gentlemen, look at the unsleeping eye of Slavery—that great, powerful interest which, while we, a free honest people, have been minding our own business, satisfying ourselves by sending John Jones or John Smith to Congress, has been seizing upon the power of the government; and the slave interest, with six millions of white people, and we with thirteen millions of white people—they have got the Supreme Court of the United States, and they have got the Circuit Courts, too. Yes, oddly enough, it turns out that six millions of men have five judges while thirteen million have but four. That fact explains the safeness of the depository of the question of slavery with the Supreme Court of the United States, and Douglas thinks on the whole, that the Supreme Court of the United States is the best place to put it—for the present. And, gentlemen, is not this an enormous fraud upon an honest people who suppose that everybody is as honest as themselves? Why, the circuit of one of the Supreme Court judges—Judge McLean—contains four millions of white people; while one circuit presided over by a Supreme Court Judge in the slave interest, and which contains within its jurisdiction the States of Mississippi and Arkansas, contains a population of four hundred and fifty thousand whites—a Northern judge being made equal to the task of presiding over a circuit of five millions of active, enterprising white people, while to do the business of quiet, peace-loving slave owners, one judge is required for less than a half million of whites. But, furthermore, whenever the organization of the Supreme Court shall be adjusted, according either to the claims, or the pressure of business, or the amount of population, there will be at least six of the nine judges representing the free states, and three only representing the slave states. Then we will agree that the Supreme Court of the United States of America is the place to settle the question of Liberty and of Property.

It is a great mistake, gentlemen, to suppose that there is anything irreverent in calculating upon changes of opinion



in the courts of justice. Lawyers have a prevalent notion that they change pretty often, and suitors sometimes find that whereas on a particular point the Court in one case decides against them, when three months after the case is again raised, and they are in opposite interests, it is decided against them too. The Supreme Court of the United States, that venerable tribunal, against which neither by tone, by gesture, nor by implication will I ever raise my voice, let them be judges of the cases that come before them—let them decide them right or wrong—a free people must maintain their judiciary or they have no defense for their liberties. But some years ago it was the settled law of that Court—settled by the judgment of the great Chief Justice Marshall, and concurred in by his brother judges, that a corporation—a banking corporation if you please—could not be sued in a United States court unless every stockholder was a citizen of one particular State. That was the law year after year, and the Court decided in favor of one interest and against another in numerous instances upon that point. But a few years later the Court turned right around and said that the previous decision was all a mistake—and that the locality gave the jurisdiction of the Court without reference to the residence of the stockholders, and that a New York bank could be sued in a New York district, although the stockholders might live in Massachusetts and partly in South Carolina. This, gentlemen, shows that differences of opinion may gain ground on subjects that come before the Court; and when the great question on the meaning of the Constitution is argued before the Supreme Court of the United States in reference to whether slaves are property under the Jurisprudence of the United States, let us hope, at least, that a different judgment will be given, and that the Court will not hold that slavery can be maintained in the State of New York under the sanction of the Federal Constitution.

Well, gentlemen, when opinions are all running one way it is very easy to say they will never change, but change is



the law of politics as well as in all else, and the people who think it so dangerous and so threatening to our liberties and to the Constitution of this country, should the Republican party be trusted with the rule in the Federal Government, when they see it carried on by the Republican party, even they may change their opinion. Changes quite as remarkable as that have occurred in subjects that are not connected with politics. We are all familiar now with the subject of railroads and the speed and safety of trains of cars. But let me read to you, what a grave reviewer said thirty-five years ago, in the first English periodical,—“The London Quarterly.” Said he:—

We are not advocates for visionary projects that interfere with useful establishments. We scout the idea of a railroad, as impracticable. . . . What can be more palpably absurd and ridiculous than the prospect of locomotives traveling twice as fast as stage coaches? We should as soon expect the people of Woolwich to suffer themselves to be fired off upon one of Congley’s ricochet muskets, as to put themselves at the mercy of such a machine, going at such a rate.

Now this conservative people, who have all the while been riding in the slow coaches of a pro-slavery administration, have been scouting the idea of anything so “visionary” as a Republican Government interfering with “useful establishments” (that is the Democratic party), and they think it would be as mad as for the people of this country to be “fired off from one of Congley’s ricochet muskets” as for them to trust Lincoln and Seward with the conduct of this government. But they will live to travel fast and comfortably to the Pacific Railroad march of free labor and free institutions.

But, gentlemen, the real sectionalism of this country is the predominance of a particular interest that seeks its own aggrandizement at the expense and sacrifice of the common rights. Such, gentlemen, is the institution of slavery, a State institution protected by laws—a property institution, as

they call it, but an institution that for its own aggrandizement has striven to control, and has controlled, and will control, while it may, the destinies of this country. Why, see how these orators from the South talk about the great staple cotton. Mr. Yancey makes a speech to the merchants of New York on the subject of cotton. "Cotton," he says, "is a great production." Yes, he thinks "it is the mistress or the master of the world." Well, Mr. Yancey, that is all very fine; but whose cotton is that? Whose cotton?—why, the planters', of course. Yes, certainly it is. Each parcel of cotton that the planter raises, until he sells it, belongs to him; but as an item of production of national wealth and of national power, whose cotton is it, Mr. Yancey? Come, now, speak the truth! It is the cotton of the nation to which we both belong. Yes, Mr. Yancey, it is. We tolerate none of these separations of interest. You cannot provoke an envy at the prosperity, at the growth, at the wealth of any of the States, or at the powerful influence as an element of national strength and national wealth of the great product cotton. So, when you set up that there is any such section as the South that owns cotton, or as the North that owns ships, understand that the locality of property is not to be confounded with the universality of national interest, and that our ships are yours and your cotton is ours.

The Republican party favors no such disposition of separating the interests of the country. I fear that the slaveholding interest has allowed itself to be drawn into too much of this sentiment, and that it looks really with more complacency at the building up of Manchester, Liverpool, Havre and Paris by the productions of the South than it does upon the building up of Boston, Lowell, New York, or your own manufacturing towns. Let us have an end of this. Let us understand, then, the commercial question of this country, that, gifted with a domain that extends from ocean to ocean, inhabited by a people whose enterprise is balked by no diffi-

culties and runs into every peaceful avenue to development, formed by Providence with a hardy region that develops the man and the woman and the child who, in our part of the country, are able and willing to work with their hands and with their heads, having a vast grain-producing region in the valley of the Mississippi, and blessed by Providence with a monopoly, if you please, of the great staple for clothing the world, in your boasted cotton; all these are by honest American industry, laid down as the rich tribute to the genius of the Constitution, to the strength of the Union, and to the enlargement of free and prosperous society. But when you turn around and talk about cotton being master of the free-men of the world, that the liberties of this country and the liberties of England hang, forsooth, upon a cotton thread; when you ask us to adopt the doctrine that, instead of new shirts being made for men to wear, that men were made to wear new shirts, that cotton dominates over the free spirit of commercial nations, you mistake your audience for the utterance of such ideas. Why, gentlemen, this Mr. Yancey would doubtless have us believe that the great Hercules of free labor that is to perform his twelve tasks of laying out this continent for the habitations of justice and freedom for generations unnumbered yet to come, finds his final fate, as Hercules of old did in the shirt of Nessus, under whose debilitating poison he yielded up the vigor of his life. Mr. Yancey, this great cotton shirt of yours that you have wrapped around the world, may keep it warm, but it will never control the beatings of its heart.

Now, gentlemen, the present trouble with our friends in the Slave States is that when they come to complaining of difficulties and of apprehension (and probably they feel them in some sort), they do not seem to know what to propose, if anything, for us to do. They say if Lincoln is elected, though everything is done the Constitution says shall be done, though he has the most votes (and it is the duty of some-

body to throw votes so as to elect somebody, if possible), yet, after all this, if Lincoln is elected, they will secede from the Union! Why? Is it not constitutional? Yes, it is constitutional, but it threatens all kinds of mischief. Well, we ask, what have you to say about it? Who, under Heaven, shall we vote for? Down South you do not seem to be agreed upon this subject. You are voting for Bell, you are voting for Douglas. Do you expect to elect either of them? No. We want to beat Lincoln! Well, we might help you beat Lincoln, but whom shall we elect? Gentlemen, do you suppose that the public mind of the country is in a state to tolerate a discussion of this question, when there are votes enough to elect Lincoln, and not votes enough to elect anybody else. They will say, "We must have a President, and we must have Lincoln, if we cannot have anybody else"; and our answer must be, until you show some concurrence of sentiment how do you know but that if we should help you to elect Douglas, you would not secede as you have threatened? And some of you say that Douglas is worse than Lincoln! Others too, say that Breckenridge threatened the country; and still a part of you say that Bell is a traitor to Southern rights! What a bad lot of candidates there is before the people. Let us make haste and elect one of them, and hope for "better luck next time."

But this is Mexican politics—not ours—this saying that it is constitutional to elect anybody who has the most votes, and if it turns out to be a man they like they will submit, but if it is a man they don't like they will not. Now here is our country—a great country, with a Constitution, a Union, prosperity, happiness, wealth, aggrandizement, power and fame. Are we to suffer these childish suggestions to interfere for a moment with our actions unless it be to offset it by a greater aggregate vote for the candidate, upon whose election they would suggest a subversion of American liberty? Their principle is that there is a power in this country that

is stronger than the Constitution, and can subvert it and the laws, when we exercise our right of suffrage. If that be so, the sooner we find it out the better, and we will settle that matter in our turn, leaving as broad and firm and rich a legacy to our children, as we received from our fathers.

Now, gentlemen, I shall detain you no longer, but with one suggestion shall leave this subject, thus imperfectly treated, though I have trespassed much upon your patience. Lord Bacon says that, "When you would have a tree produce more fruit than it is used to do, it is not anything that you can do to the boughs, but it is stirring the soil and putting fresh moulds about the roots that must work it." Now, our fathers planted this tree of constitutional liberty to flourish forever, to dominate with its protecting shade over this whole continent, from ocean to ocean, and be a shelter for generation after generation of men that should be true to the principles of justice. The winds of agitation may sweep in the boughs and the ordinary contrivances of party may keep up, if you please, the appearance of active intelligent care of the government; but I tell you that it has not produced as good fruit of late as it used to do. It is not anything that you do to the boughs, but it is stirring about the roots and extending the free soil from which they must derive nourishment that it is to reproduce and amplify forever and forever the growth, the beauty, the flower and the fruit which belong to its nature.



## VIII

### SPEECH AT MASS MEETING HELD IN UNION SQUARE, NEW YORK, ON THE AFTERNOON OF SATURDAY, APRIL 20, 1861

#### NOTE

The firing on Fort Sumter and its evacuation and surrender by Major Anderson on the 13th of April, 1861, and the immediate call by President Lincoln for 75,000 volunteers to sustain the government aroused the people of the North throughout the country to a realization that the Union and the national government were in peril. The loyal men of New York City answered at once. The news reaching New York on Sunday, April 14, there appeared in the "New York Tribune" of the following morning a call for a patriotic mass meeting which was circulated throughout the day for signatures. The merchants, the bankers, the professional men and men of all sorts, loyal to the government, rallied to its support. Committees were formed, money was subscribed, and every effective measure was taken in aid of the State government to raise and equip at once regiments to be sent to Washington to protect the Capital.

Along with these preparations, the movement proceeded for a great mass meeting to express by a solemn demonstration the patriotic sentiment of the great city of the country. The first proposition was to hold the meeting in Cooper Institute or the Academy of Music, but it was evident from the spontaneous uprising of the population that any building would be wholly inadequate for the occasion and it was promptly decided to hold the meeting in Union Square on the afternoon of Saturday, April 20. Gen. John A. Dix was selected to preside and a committee on resolutions and speakers was appointed which afterwards added to its number gentlemen representing distinct organizations, not political, that had joined in the general volunteer movement of the merchants. Of this committee, Mr. Evarts was a member and drew the resolutions that were adopted by the committee and presented to the meeting.

Never before had such a demonstration been planned, and never before or since has any such assembly of men been gathered together in this country. While preparations for the meeting were in progress, news was received of the firing on the Sixth Massachusetts regiment by the mob in the streets of Baltimore, as it passed through on the way to Washington. This incident served to give added strength to the earnest patriotism of the loyal men of New York. It was estimated that there were one hundred thousand persons present at the meeting and five stands were erected at different points for the accommodation of the many speakers. The plans of the committee had contemplated four stands to which was added a fifth at the last moment.

The proceedings of the meeting are succinctly outlined in a historical sketch of the Union Defence Committee of the City of New York by Mr. John Austin Stevens. The Union Defence Committee, of which Mr. Evarts was the secretary, was the direct outcome of this Union Square meeting, appointed pursuant to the resolutions adopted by that assemblage, "to represent the citizens in the collection of funds and the transaction of such other business, in aid of the movements of the Government, as the public interests may require."

The order of proceedings at the several stands was uniform. They were opened by prayer offered by some eminent clergyman of the city and some distinguished citizen presided at each stand. The resolutions were read and a number of speakers made short addresses to the crowds. General Dix, chairman of the entire assemblage, was at stand No. 1, on the east side of Union Square facing the equestrian statue of Washington. With him were Major Robert Anderson and other officers from Fort Sumter, who, during the meeting, were escorted from stand to stand to receive the acclamations that greeted their presence. The Rev. Gardiner Spring, the venerable pastor of the Brick Church, offered prayer. General Dix was introduced and spoke. Mr. Robert H. McCurdy read the resolutions offered by the committee. During the proceedings, a letter from Archbishop Hughes was read and the following were the speakers at this stand:—Hon. Daniel S. Dickinson, Senator Edward D. Baker, of Oregon, Hon. Robert J. Walker, Fernando Wood, mayor of New York, former Governor Hunt, the

Hon. Robert C. Schenck, of Ohio, William M. Evarts, Simeon B. Chittenden and Caleb Lyon of Lyonsdale.

The few words from Mr. Evarts on this occasion were as follows:—

(Reported in the “New York World” of April 22, 1861.)

*Mr. Chairman and Gentlemen:—*

I regard this as a business meeting commencing the greatest transaction that this generation of men have seen. We stand here the second generation from the men who declared our independence, fought the battles of the Revolution, and framed our Constitution. The question for us to decide is whether we are worthy children of such men or whether our descendants shall curse us as we bless our fathers. Gentlemen, you have got something more to do than you have done hitherto—something more than merely to read the glorious history of the past; you have got to write a history for the future that your children will either glory in or blush for.

When Providence puts together the 19th of April, 1775, when the first blood was shed at Lexington, and the 19th of April, 1861, when the first blood was shed at Baltimore, I tell you it means something. What that statue of Washington sustains in its firm hands, the flagstaff of Fort Sumter, I tell you means something. There is but one question left, and that is, whether you mean something too. If you mean something, do you mean enough? Do you mean enough of time, of labor, of money, of men, of blood, to seal and sanction the glories of the future of America? Your ancestors fought for and secured independence, liberty and equal rights. Every enemy of liberty, independence and equal rights has told you that those ideas are inconsistent with government. It is for you to show that government of the people means that the people shall obey the government. Having shown what the world never saw till the Declaration of Independence was made—what a people which governs itself can do in peace—you are to show what a people which governs truly means to accomplish, when it wages war

against traitors and rebels. Each man here is fighting his own quarrel and protecting the future of his children. With these sentiments, you need no argument and no suggestion to carry you through this conflict. You are to remember your fathers and care for your children.

## IX

### SPEECH AT THE REPUBLICAN UNION FESTIVAL, NEW YORK, FEBRUARY 22, 1862.\*

In response to the Toast:

“THE CONSTITUTION OF THE UNITED STATES:—WITH ALL ITS PRIVILEGES AND BLESSINGS, MAY IT BE PERPETUATED TO THE LATEST POSTERITY.”

*Mr. President and Gentlemen:—*

It is my good fortune, by the kind invitation of your committee, to take part now, for the third time, in the celebration of this great national festival, under the auspices of the Republican Association; and the three occasions, including the present, are at three notable stages in the great national transaction, for the inauguration of which, in support of the Constitution, and through which for the triumphant maintenance of the Constitution, the Republican party is, in my judgment, mainly responsible.

We celebrated the day in 1860, in advance of the Republican nomination for the Presidency, which had for its purpose to defend the Constitution against the encroachment of a great State interest, that was striving to impress a local institution upon the national life and character. We succeeded in the election, under the peaceful forms of the Constitution, and had transferred the power of the government from the faction that had so long wielded it, to hands that were faithful to the spirit of the Constitution. We celebrated this anniversary in 1861, in the waning months of the administration of Mr. Buchanan, in the very midnight of the gloom which prevailed over this country, from the period of the election of Mr. Lincoln, until the guns of Sumter proclaimed the breaking day. A military rebellion was planned and threatened, and had commenced the revolt which since has made such head. We celebrate it now, sir, when the armed rebellion has assumed its fullest proportions—when

\* See prefatory note to speech, page 479.



the power of the country has been raised against it,—and when the declining fortunes of treason announce that, soon, reinstated and re-established, the Constitution will resume its sway over the whole territory of the Republic.

Mr. President, it was the Constitution as our fathers framed it, before the rebellion broke out; it is the same Constitution while the rebellion rages;—and it will be the same Constitution when the rebellion is over. And, without laying any stress upon the great topics of popular liberty, and of national strength and pride, which have been aimed at, at least, in other political constitutions, let us understand that the vital and peculiar principle of our Constitution is, that a great nation can be formed, with the strength of government and its fund of power so distributed as not to be an overmatch for the freedom of the people—that a nation can be constituted powerful enough to maintain itself in the family of nations, and to secure to its citizens the honor, respect, and protection which only a mighty nationality can command, and yet, by the division of the great fund of power essential to government, between the general and the local administration, the people can be protected in their freedom, and secured in the management of their everyday interests by representation, neither remote from them, nor insensible to every duty to them.

Mr. President, the first essential safeguard of this distribution of powers is, that the general government shall deal only with that which is common and national, and the State government shall have the exclusive administration of what is local and peculiar. The struggle, under such a distribution of power, constantly is, or constantly may be, for local institutions and interests, to strive to force themselves into national life and character; and, on the other hand, for the general government to establish rules and laws for domestic institutions and interests, which its policy and its purpose, as the policy and the purpose of the majority of the

nation, may suggest. I hold that the fundamental principle of the Republican party,—the keynote of its political purpose and action,—has been, and is, to oppose this invasion by domestic and peculiar interests, of the domain of national power. To stop the encroachment of slavery, and to destroy the political power of slavery, was the purpose and end, and will be to the last, as thus far it has been, the success of the Republican party. According to the experience of the nation, when, by the suffrage under the Constitution, we had placed a Republican administration in Washington, we had accomplished our political purpose, and secured the triumph of our principles. The ballot, which our Constitution decreed should be the final arbiter in political controversies, had placed the control of the government in our hands. But,—a strange novelty in our affairs,—an appeal was taken to arms; and we, the people of this country, have been obliged to try over again, by the bullet, and the bayonet, those questions which the will of the nation had settled by the ballot. The Constitution is to be maintained—and it is always and in all things to be maintained—and when that question has been settled by the absolute suppression of the rebellion and the peaceful resumption of the dominion of the laws, then, but not till then, the triumph is complete.

And now, Mr. President, allow me to say, that the Constitution is equally concerned, and the maintenance of our liberties and our power is equally concerned, that the invasion by the general government of the sphere of local and domestic institutions and interests, shall never be permitted. It will be found that the good Ship of the Constitution has *two* broadsides, equally well armed, and whose thunders alike are sleepless when danger threatens. Whenever danger comes, as it has done, from local or State interests striving to control the Federal government, we have a broadside for the enemy in that quarter; and whenever the rage of the

contest seeks to make the struggle revolutionary, and to carry the Federal government into a suppression of the clear right of the States to the control of their domestic legislation, it will be found that the other broadside of the Constitution has as many tiers of guns, of as heavy metal, and with ammunition as effective, as when it was bearing upon its enemy on the other quarter. We are attached to our government, we know that it will bear the stress to which it is now subjected, and, in the future, we fear not but that it will outlive every storm. Therefore, all fears and alarms that because we are sustaining the Constitution against one hostile power, we shall, by the zeal of the contest, be carried beyond the lines of duty, and press this war into a revolutionary interference with what the Constitution attributes to State control, are in my judgment, wholly vain.

But, gentlemen, a word as to the Constitution and its relations to slavery as rising in this war. In the first place, with all the reading that I have been able to give to the Constitution, I have never been able to see, that, beyond a single clause in it of very narrow application, there was the least obligation, or the least duty, in regard to the protection or maintenance of slavery anywhere. We have, undoubtedly, a constitutional provision and duty, that in a certain specific case, where slavery presents itself outside of the State in which it prevails as a domestic institution, it shall be remanded to its home, there to be dealt with. I refer, of course, to the fugitive slave clause of the Constitution. We have another provision, generally referred to as having some concern with slavery, which obliges the Federal government to assist loyal State authorities in suppressing insurrections, too great for their own power to subdue. But that provision, gentlemen, applies to an insurrection of free white men, just as much as to an insurrection of black slaves; to an insurrection in Massachusetts, just as much as to an insurrection in South Carolina. It is a matter of gen-

eral concern, that the civil structure of the State shall not be overthrown by an armed rebellion, too powerful for the resources of the State to put down. Indeed, the only occasions, in our constitutional history, where this power of the Federal government has been invoked, have been to suppress seditious combinations of white men in the free States of the country.

Now, gentlemen, men think differently, in dealing with the subject of slavery, as to the *end* at which they should begin. Many men, enlightened, public-spirited, earnest, and zealous, think that the social structure of slavery must be undermined, in order to overthrow its encroaching political power. My own judgment and feeling have always been that the political power of slavery must first be overthrown, in order that its social structure may be undermined. It is our duty to see to it that slavery gains not one ounce of strength, not one day of duration by an added support of the Federal government.

But, that duty discharged, it is our further duty to leave slavery to the disintegration and destruction, which, thus thrown back and made a domestic and local institution, domestic and local control of it must, of necessity, occasion. The power of the Federal government is what has kept it alive in many of the States of the Union, and gives it strength in all where it maintains itself. In that, the free states have been guilty. But they have repented, and they have brought forth fruits mete for repentance. They no longer sustain or protect it. And just as surely as the weight of the Federal government, thrown into the scale of slavery, hitherto has influenced politics in the free states, and made them pro-slavery in sentiment and in action, just as surely will the power and patronage of the Federal government, when engaged on the side of free principles, make the slave states anti-slavery. But it will do it without injury to the text or to the spirit of the Constitution;—correcting its

bad support of a feeble and enfeebling institution, it will leave it to the processes which its own society will provide for its destruction. Why should we consider slavery, when robbed of its political strength, and driven to depend upon its own merit, and its own unaided forces, a dangerous institution? To whom is it dangerous? Look at the states on which it turns its fond gaze and upon which it bestows its smiles; and look at the states on which, retreating, it turns back its frowns. No, gentlemen, believe me, the favor of slavery is a false, a meretricious favor, and, as of every other harlot, it is its love and not its hate that should inspire fear, and its rage inflicts no wounds so deep as its caresses.

Gentlemen, we are fighting, and we are fighting for the Constitution. *War*, to sustain the Constitution, however different from peace in its *methods*, is just as constitutional. It is always constitutional to support the Constitution, by such measures and by such weapons, as are necessary to repel the force that is brought against it. And while this constitutional war lasts, its forces, its blows, shall not be withheld, not averted, not parried by the Constitution, but shall fall with whatever shattering force they may upon the institution of slavery; and whatever slave war makes free, peace, restored, shall never re-enslave. Go on with your war. It falls upon the guilty authors of the rebellion—the slaveholding aristocracy of the South. Let it fall with all its weight, upon the bad stimulant of their unholy passions—the institution of slavery; and when the war is over, whatever of slavery is left within the jurisdiction of loyal State governments, will be dealt with by them. If the structure of society shall be so far broken by prolonged contumacy of rebellion, in any region, that a loyal State government cannot be found, or the materials of its rightful and safe construction cannot be gathered, then society, by necessity, falls under the protective control of the Federal government, and slavery, then, in common with all other domestic in-



stitutions, will be directly dealt with. But, gentlemen, with good faith and an honest purpose, we will maintain the principles of the Constitution, and not in the zeal of the contest, or in the heat of our resentments, or in the glow of our own just enthusiasm for liberty, destroy the Constitution that this war is, on our part, raised to uphold.

There has been a great deal of puzzle, gentlemen, about a certain matter in this war, when the progress of our arms brings us in contact with the black population of the South. A somewhat taking theory and phrase, that never seemed to me to be very sensible, were, early in the campaign, put forth by a distinguished general, which, putting slavery upon the ground of *property*, described the slaves as *contraband* of war. My view of the Constitution, in this connection, is this: that the slaves of the South are to the Constitution and to the Federal government but a part of the *population* of the South. And when treason defies the government, and raises the flame of war, the Constitution knows but two descriptions of people—those that are loyal, and those that are rebel. And, weighed against the safety and protection of the *loyal slave*, the lives and fortunes of a hundred *rebel masters* are but dust in the balance. This proposition, so thorough and universal, arises under the laws of *war*—a constitutional war—and no enactment of Congress can add greater vigor of authority, or produce greater practical results, than an active exertion of these powers of war.

Mr. President, I believe I have said all that is necessary about the Constitution. I do not believe, as an eloquent gentleman has suggested to us, that it is altogether a matter of *geography* whether we maintain the Union and our Federal government or not. I think it depends a great deal more upon the *people* of the country,—upon their intelligence, upon their integrity, upon their virtue, upon their willingness, in sober and honest endurance, to bear the burdens that are necessary for the triumph of our cause. I believe,

Mr. President, that we need to marshal the financial resources of the country with equal courage and wisdom—that we must pay taxes long-continued and heavy. As, too, I believe that this generation has been guilty of the desertions of public duty that have come so near overthrowing the great fabric of government that our ancestors transmitted to us, I say that it is unjust and cowardly for us to put on our posterity the payment for our sins. I would like to know what manhood there is in saying, “We will defend against the dangers that our feeble and selfish politics have brought upon the noble heritage that our fathers prepared for us and future generations, but we will make our children pay the expenses of it.” And we must insist upon it, that, with the same perseverance, the same fidelity, the same honest self-sacrifice, with which our fathers wrought for us, we will labor in this, the heat of our day, for our children. *We must be honest.* I say it, Mr. President, with profound sincerity, that, next to the crime of taking money to betray your country, in its danger, is the offence of extorting money for defending it in its necessity. I don’t believe in that softness of phrase which makes it a crime to grow rich by the betrayal, and a happy fortune to grow rich out of the necessities, of the country. Let us see to it that a deep and firm public opinion makes itself felt upon this subject—felt by the government, felt by the cabinet, felt by the contractors, and felt by the people.

## X

# SPEECHES IN THE CAMPAIGN AGAINST THE "TWEED RING," 1871

## NOTE

At the beginning of the year 1871, that small band of conspirators, known as the "Tammany Ring," perhaps more frequently designated, by the name of the chief in the conspiracy, as the "Tweed Ring," was strongly intrenched in the government of the City of New York and was at the height of its power. The complete and compact organization of the "Ring" that placed this corrupt cabal,—Tweed, Hall, Connolly and Sweeny,—securely in control of the entire administration of the city's government and finances, was the result of several years' skilful planning and manipulation. The history of its rise to power and its final overthrow, in the autumn of 1871, has been told by those who most actively took part in the exposure of the wholesale robbery of the people of the city, and in the prosecution of the criminals.\*

The ascendancy of this body of knaves, and the successful execution of their plans for plunder, were made possible through a general degradation of the politics of the period, the corrupt character of the State Legislature and the widespread apathy of the electorate. The elections of 1868 in New York City were marked by every conceivable method of extensive fraud and corruption of the grossest character. They resulted in the elevation to the governorship of the nominee of the "Ring" and the election of Hall as mayor. As Mr. Tilden said, by this election "the 'Ring' became completely organized and matured." Hall's term of office as mayor expired with the year 1870, and at the elections of that year he was re-elected to the office for another two year period.

\* Writings and Speeches of Samuel J. Tilden, edited by John Bigelow.

Peculation Triumphant: being the Record of a Four Years' Campaign against Official Malversation in the City of New York, A. D., 1871 to 1875, by Charles O'Connor. See also Chapter on the "Tweed Ring" in Bryce's American Commonwealth.

In the year 1870, a new charter of municipal government for the City of New York was procured from the legislature. This, in its general principles, was an improvement upon the former system of government, as it had existed since the year 1857, and as such commended itself to the judgment of many of the best citizens. It simplified very much the administration of the city's affairs and placed the responsibility in a few hands. It has been said with some truth that "the new charter's only fault was that those hands were at the moment unclean and grasping hands." The new charter had been obtained from the legislature wholly in the interest of the "Ring" and it enabled these thieves to continue their depredations with ease and secrecy and in apparent security for the time. The operations of the "Ring" had excited public suspicion in 1870, and one cause of this had been the failure of the comptroller to publish in January of that year his report of the city's finances. This was not given to the public until the following October. By a bold move on the part of the "Ring," the comptroller invited a committee of citizens, made up of men of the highest respectability and honor, to examine the financial affairs of the city, and he was able so to deceive this body of gentlemen that they issued a public statement to the effect that "the financial affairs of the city under the charge of the comptroller are administered in a correct and faithful manner." This same committee gave the debt of the city as twenty millions less than what it was afterwards ascertained to be and stated that the entire debt of the city would probably be extinguished in less than twelve years.

In 1871, not content with the powers they already had under the charter, the "Ring" applied for and secured further legislation which gave still larger opportunities for robbing the city. The exposure of the methods of the "Ring" began on July 8, 1871 by the publication of a statement in the *New York Times* of that date. This was followed by additional statements of the accounts of the city as disclosed and furnished to that newspaper by a disappointed, corrupt politician, who had somewhat accidentally been informed in minute detail of the fraudulent operations of the "Ring." The revelations of the *New York Times* aroused the people of the city, and honest citizens, of all parties, united in placing before the people reform tickets for the coming election

containing the names of honest candidates irrespective of party as against the Tammany ticket which was all in favor of the "Ring." The canvass resulted in the overwhelming triumph of the reform movement and in the subsequent dislodgment and overthrow of the "Ring," and those who had supported it. Tweed was, to be sure, through his powerful local influence, returned to the State Senate, but he never dared to take his seat.

The four speeches that follow, delivered April 6, October 20 and 25, and November 2, 1871, at various stages of this popular uprising, are taken from the reports in the *New York Tribune* of the days following. The speech of April 6 was delivered at a mass meeting at Cooper Institute, under the auspices of the Council for Political Reform, an organization with which Mr. Evarts was closely identified. The meeting was called as a protest against the vicious legislation, then pending before the New York Legislature, to which we have referred. Mr. Evarts spent the summer of 1871 in European travel and, on his return in October, entered at once and heartily into all the movements against the "Ring," that were then well organized and under way.

The speech of October 20 was made at a citizens' convention held in Chickering Hall, under the auspices of the Council for Political Reform, to nominate candidates for judicial, legislative, city and county offices, and that of October 25 was delivered at a mass meeting in Cooper Institute, at which Horace Greeley presided, to ratify the Republican State ticket. On November 2, within a week of the election, a great mass meeting was held in Cooper Institute at which Mr. Tilden, Mr. Joseph H. Choate and Mr. Evarts spoke. An incomplete report of Mr. Evarts's speech has been preserved.

History justly accords to Samuel J. Tilden the chief honor and credit for the overthrow of the "Tweed Ring," for his indefatigable labors, both in the political field, and as a lawyer in the public prosecutions that followed the political defeat of the conspirators. In the legal proceedings Mr. Charles O'Connor was the leader. Though Mr. Evarts did not figure as prominently, his counsel was freely sought and as freely given in the initiatory movements that culminated in the downfall of the conspiracy. In the fall of 1871, Mr. Evarts was appointed as one of the three counsel for the United States, in the matter of the Alabama Claims, before the



Geneva Tribunal. This mission took him to Europe late in December of that year and prevented any further participation in these affairs at home.

#### SPEECH AT COOPER UNION, APRIL 6, 1871

*Fellow Citizens:*

I am quite sure that if the patriotic, laborious efforts of the Council for Political Reform now carried on for some years not only in this city but in this State, laying the foundations for great and important public action, could be rewarded tonight by no consequences from their call but this very assemblage itself, it would be to them evidence, to you evidence, to honest men evidence, to knaves evidence, that the people of this city and of this county do take an interest in the substantial welfare of the Commonwealth and in the name and fame of American citizenship.

For this assembly, so vast in its numbers, so universal in its comprehension of the interest and the pursuits of this community, so earnest and honest in its makeup, is brought hither by none of the excitements of politics, by no zeal for candidates, by no interest in the results of any special election. The conjuration which has brought you together is to prove the conjuration to combine you in the warfare, the weapons of which you are tonight to assume, and that is a conjuration as deep and as earnest as that with which the foundations of this republic were raised, and with which it was saved from the ruin that was threatened it by violence. For of what good is it that we should have brave and heroic ancestors, and that we should have brave and heroic contemporaries on the field of battle, adequate to join an issue with the strongest rebellion that the world has ever seen, if, when this heroism has secured a perfect triumph, our imbecility, our ignorance, our folly surrenders to the slime of fraud, what would not be yielded to the roar of battle? The truth

is, gentlemen, that a meeting like this is but a symptom of what occupies the public mind throughout this whole country—of deep, of serious concern about the very institutions upon which our liberty rests. But without a protector, without a guardian, except what each brave heart and each shrewd head shall furnish to each citizen, what headway, what strength, can any scattered and diffused force have against powerful combinations, stimulated by sordid purpose, and confederated in the bonds of common infamy?

Now, gentlemen, this Council for Political Reform has undertaken to set on foot the sentiments and movements and to facilitate the combinations by which disorganization which is the hope, the plan, the strength of the combined movement of selfishness and fraud, shall cease. If subterranean links can be made between knaves of both parties, open and manly combinations can be made by true men of both parties, and the hosts may be counted on one side and the other. The occasion of this meeting is the pendency of certain measures before the legislature threatening serious accession to the strength against which we are allied, serious invasions of the common right of citizens, serious interference with the institutions of our liberty, civil and religious, in which we have our pride and our safety. And the situation is propitious. We stand not indifferent to parties; we are all adherents of one party or the other; but we mean that parties shall confine themselves to their true function, which is honestly, usefully to maintain the principles on one side and the other for which, and in which, the party has its life, by which and through which, the nation has its life. But when either party, especially the party to which we respectively adhere, loses its public virtue and first becomes a faction, seeking only the selfish interests of its members, and then—oh, sad catastrophe!—a conspiracy seeking the public life; then our hands, our voices our votes, are the first to be raised to crush the treason against the common safety.

And look how propitious the actual political situation is for the assertion of this principle, the exercise of this power. The Republican party holds at Washington every department of national authority, the executive, Congress, the judiciary. The Democratic party in this great State of New York, of which we are all citizens, holds every department of power, executive, legislative, judicial, and in this city every department of local administration. Neither of these parties can say to the citizen within the sphere of its administration that it is embarrassed, or impeded, or thwarted in its administration of power. Whatever faults we shall find in regard to the administration at Washington, it is all Republican. Whatever faults we shall find in the administration in New York City and New York State, it is all Democratic. And the people of the United States are—and I hope it may always be so—watching them both and not from distress necessarily, or suspicion, but because the people are aware that great questions of taxation, of revenue, of public expenditure and of public honesty in the servants of the nation and of the State, and in the administration of suffrage, are paramount and principal practical questions in all of our affairs. You will observe then, also, another great change in this movement which we tonight publicly inaugurate. It is that neutral judgment of both parties. It is nothing to boast of in respect of superior strength in the popular will. The elections are closely adjusted. In New Hampshire no governor is elected by the people, and the legislature, barely carried by the Democracy, is to choose a governor. In Connecticut no governor is chosen by the people, and the legislature, carried by the Republicans, is to choose a governor. The congressmen of the Democracy are chosen in New Hampshire and the Republicans in Connecticut. And each party draws off from these divided fields, watching anxiously the strength of the other. Is there not, then, some hope that when voters on all sides really

concern themselves with matters of taxation, of expenditure and of honesty, and when the popular will, holding, as it always has and always should, the final question of power in its hands, thus stands aroused, watchfully and equally balanced, is it not an auspicious time for honest men to come together and say, "Now we meet as earnestly on one side and the other as you, but we fight for the issues that we avowed, and we will allow no profligacy, no treason, no surrender or betrayal of the trust." And as in war so in politics. There is but one general way of visiting displeasure. Your guns always point toward the enemy, and your shots cannot be promiscuously diffused. In politics, the way that neutral power, that means to prevent foul play, shows its authority is by combining its guns against the party that exhibits the foul play. And these things are perfectly well understood by the politicians. The politician is not a man that possesses his soul in patience by any means. A politician is a man racked by anxieties, conscious that a breath may unmake him, as a breath has made him; and the breath of a meeting like this is as easily understood by a politician as a ward meeting.

Now, gentlemen, there is a deep distrust in this country of the good faith of political managers—a feeling that the very institutions, which make up the defences, as well as the glories, of liberty, are in danger—because a people, the best instructed, the most vigorous, and, I think, the most patriotic, and the most intelligently patriotic that the world ever saw, by its very confidence in its institutions, has relaxed that practical virtue, without which no valuable possession, however safely transmitted, can be secured and enjoyed. Why, gentlemen, we really seem to have thought that the wisdom of the fathers of our institutions had set going a machine in government that had the virtue of perpetual motion, and that it was not limited to an establishment of the organism of liberty which brave hearts and honest heads



could wield for the protection of their country, of themselves, and of all their interests, and which slaves and knaves could trample in the mire as if it had not caused the long series of martyrdom which built up liberty. And we must get over that notion. And then there has always been another difficulty. When those threats were made against the institutions and against the government and its administration, we must look around to see where the protectors were. Cromwell was named Lord Protector of the liberties of England, and he ably discharged that duty. But who is named Lord Protector of the liberties of America? The same persons that are named its sovereigns—the people. And you can surrender this liberty whenever you please. You can have it stolen from you whenever you do not resist the thief. You can have it murdered before your eyes when you are too cowardly to intercept the assassin, and I would like to know who will do the weeping for you then. You have had everything that the human race, in its progress up to now, could give to help and maintain freedom. You have had education as free as the air; you have freedom of conscience; you have a free press; you have the right of free assembly, the right to bear arms; you have the right of free and equal suffrage, and you have all the elements of justice, equality and of attainment. Yet if the end of the whole of it is that the only combination that you are capable of, when the wolves of fraud attack you, is that sole combination which the sheep have ever been known to exhibit, that is, following the first that ran away—who will save you, who will help you? Now, it is very easy to say we will fight for our rights. It is all very fine; we have always been ready to do something else than the thing that we are called upon to do; and just so long as these marauders of our peace and these defamers of our character find out that we are always ready to do something else than the very thing we need to do, you may rely upon it they will not be disturbed at all.



The moral of it all, gentlemen, is that our liberties are all in our own hands. There is not a dungeon, or a thumbscrew, or a file of solders, or a tyrant of any kind, that threatens the person, or life, or the liberty of anybody. All they ask of you is that you will be gagged, and lie still while they pick your pocket. And if you resist and make a noise and a fracas, and break the peace, why who could complain if they break your heads for doing so? Now, gentlemen, that is precisely the matter; epithets are of no force. It is no longer a matter of pride to be a New Yorker; it is a matter of deep disgrace, if New Yorkers cannot save themselves from the infamy in which they are now submerged. And there are a great many people that think so, among which number I include all who are now in this room. You may be sure there are a great many people outside of this building that are of the same opinion. There are always four people that will be of the same way of thinking, that stay away from the meeting, to one of those that come. The first quarter are those that do not come because they don't think there will be anybody there. The next quarter stay away because the room will be so full that they cannot get in. The third quarter stay at home because they can read it all in the newspaper the next morning, and the next quarter stay away because they think it would not do any good if they would come, and, as far as they are concerned, it is probably so.

Now, what are the great institutions upon which our liberty rests? The separation of Church and State, freedom of instruction, fearless administration of justice, and the suffrage. Now, who are interested in these particularly, I would like to know? Is it the rich man? Why, the rich men are those that come on pretty well, as is shown by the fact of their being rich, under any form of government except that of the next world perhaps. I never heard there was any trouble about having rich men under an empire, under a tyranny, under an East Indian government of nabobs and

satraps. No trouble with the rich men there; the trouble was with the poor. They kept growing poorer while the rich grew richer. Did you ever see, before this present exhibition, in America, in the face of the people, the taxpayers growing poorer every day and the taxgatherers flaunting their riches in their eyes? We have gone on under our institutions with perfect safety and without discords between the rich and the poor. Why? Because justice and law presided over them all. And the rich man's fortune marked his enterprise, his energy, his thrift, his frugality, perhaps his good luck, and the poor man's poverty, and earnest and honest labor gave him justice, and equality, and education for his children, and a vote at the polls, and it was the best country for him the world ever saw. And all these rich men that I see were sons of poor men.

But let me warn this nation that if you are going to introduce the inequalities of life made by the taxation of the poor to make up the fortunes of the rich, by fraud and force, the principle of justice no longer keeps the peace between these classes of society. Why, we ought to be able to understand, after the tremendous war we have gone through against injustice and the oppression of slavery, sacrificing 250,000 men, loading ourselves and our posterity with debt for many years, and bringing on the field larger armies, with sterner fighting, than any fields have shown before, that there was some human nature in this American people, and that it would show itself all over the world when injustice and fraud become triumphant. We are none of us prophets, but we do know that oppression will make a wise man mad; and we know that we are a wise people. The truth is that this country, for the first time, is brought face to face with real politics. It is the question whether freedom can peacefully preserve itself by the fact that every man has a peaceful vote, and every man has a musket behind his peaceful vote, to see that his vote is respected. Now, we have tried that.

We made a peaceful vote in 1860, and it was not respected; and we shouldered our musket till it was respected. And now look at the poor man's vote. The rich man can stay away from the polls, as he often does. Poor men always go to the polls. I honor that vote. I honor the poor Irishman who goes to the polls as early as the rights of citizenship can be honestly given him. I honor the liberty-loving German, who goes to the polls and votes according to his notions of what liberty and law require. I honor the American youth who looks forward to his majority, when he can assume the duties and enjoy the privileges of a voter. I abhor the methods that suppress the equality of the vote—the poor man's only possession and only protection—and, in a fraudulent count, or in repeaters' personations—infamous robberies of liberty—strike down the poor man's power. And if I abhor it, who do not suffer much from it personally, you may rely upon it that before long the poor men who are thus robbed will abhor it, and abhor the men that have robbed them.

Why, gentlemen, of what use is the suffrage to the classes that desire respect and equality and cannot enforce it? If their masters tell them, we have hired enough people to do the voting, and we cannot count you any longer; and we have paid people to do the counting, and we do not care what the votes put into the ballot box are, who has taken away the suffrage? Who, but the ruling powers in this city, who now demand from your legislature an increase of authority and full scope for taxation at their will? Now, gentlemen, we suspect our public servants of good faith in their representations of the parties. Why, gentlemen, what do you think of this state of facts? A wise arrangement of places on the board of inspectors or canvassers provides that there shall be a representative of the beaten or inferior party upon it. Very well, that is in order to have fair play. Well, now, in 1868, the count in this city carried the vote of this State to

make the governor and the Democratic candidate for president; and if New York State, by its electors, had been the turning point of the presidential election, as it might have been, it would have elected the president. Eighty thousand or so, I think, was the count. It was false and fraudulent, and the representatives of the Republican party in the count and the canvas did their share in the betrayal of the suffrage. And I am told, on good authority, that this turning point of a false State election, and the false presidential election (as it might have proved) did not make more than \$200 in any one instance for the betrayal of the Republicans' trust. Well, now, no man will even play cards if he knows the cards are marked. What shall we do with Republicans if this is the style in which our servants treat the trust we put in them? I do not wonder that the Democratic masters scoff and sneer at the virtue of the Republican party where they have measured and bought. These are pretty serious facts. Now, supposing a presidential election had been turned in that way—do you think the Mississippi Valley would have stood that, or do you think they would have found out that they had the muskets behind their votes, and these men in New York must fight for their votes if they wanted them counted in that way? There is not so much danger of repeating on the battlefields, nor of counting those that are not there. It is difficult even to count those that run away.

Now, gentlemen, these are pretty serious matters, and I beg to say to you that, in my humble judgment, the people of this country are thinking a great deal more on these subjects than they are on any of the past issues that have divided the politics of this country and have been fought through.

I would not advise any political party to hazard their maintenance of power upon the avowed espousals of corruption, and an avowed contempt of honest men. And yet I speak now of a party to which I do not belong. I think the popular judgment is that the present management and adminis-

tration of that party, now in power in this city, do boast of their corruption and do despise honest men. They say, "What are you going to do about it?" I think they will find out what we are going to do about it. Now, you know a man may divide his monied interest a good deal, and there may be a balance when he is friends with the powers that be, and he confines his patriotism to explosions in his family; but when you have got down to the men that are poor and honest, they feel the shrinkage of the comforts of life and the oppression; and when you come to the men that are proud of their birth-right, if they were born here, and proud of their adopted country if they came here, and find that American liberty is made a by-word and a hissing, by vile and arrogant aristocrats, made so by taxation, you have touched a sentiment that does not divide itself up between the worship of the powers that be and the maintenance of self-respect at home. You cannot have them both.

Now, these measures, first the city tax bill, which is a very extraordinary bill, defended by a great many people because it is not any worse—the same feeling that George III had in celebrating the victories over his troops in America—because 'tis no worse. They say, "Good heavens! don't raise a row about these people taxing you two per cent; if you do, they will tax you two and a half per cent"; and if you insist upon it, that your representatives, that you have chosen for yourself, and the people of the State have chosen and sent to Albany, should tax you, they say, "Why, don't you see what a pack of rascals you have chosen?" Well, gentlemen, I don't know but the people of this county and this State are going to say that four men may tax them, provided they won't tax them but \$22,000,000 a year.

The Commons of England fought for the power of taxation; they would not allow a shilling to be taken from them by the King, although it was an honest tax, and employed in the nation's defence. They say, when we tax ourselves



we want to know what it is paid for. The Commons of America threw over the tea and broke up the stamp records rather than pay a tax that they had not laid themselves. And now you are soberly requested to agree that if these people will be satisfied with arranging for what and in what expenditures \$22,000,000 shall be raised, you let them have the handling of that sum of money. Now you can throw away your liberty if you choose. For my part, I propose to stand upon the proposition that the people's representatives, chosen by themselves, shall have the power of taxation, and be accountable for it; and, if we don't like it, we will change them; and if we don't change them then, we must not say we do not like it.

But I cannot express my contempt for the people that would throw away in open day this power of taxation on the eringing argument that if we complain somebody else will tax us more. No, we will tax ourselves! What prevents your legislature from saying today: "So many thousands, so many millions, shall be raised for this and that purpose, and reducing it on an honest estimate to \$15,000,000 or \$14,000,000?" What prevents it? Nothing but the fact that you have sent to Albany seventeen men who all live on taxes and hold places in the city government. Well, now, what a spectacle is this for a free people? Why, the British Parliament, the British Commons fought this through, that they would have no "place" men in Parliament; that the men who went to Parliament should go there for the public trust, and no other, and when a new member of Parliament is asked to take a place in the Ministry to carry on the execution of the government, he is obliged to resign his seat in Parliament and go to the electors to see whether they will choose him over again for he has become a "place" man. Did you ever hear of such an infamous piece of misconduct on the part of the voters of this city, including ourselves, as to sit down under a government that has taxed us, our representatives

every one of them being incumbents in office under these men that administer and distribute taxation?

Now, I propose that at the next election we will have some representatives who are satisfied with being representatives, and are not "place" men, and then we will see how they will tax us, and not give up the power of taxation to four "place" men in this city to administer taxes which we pour into their laps.

Now, we have a pretty good registry law, and I have not heard of anybody complaining that he did not get a chance to vote once at that election; there may have been such cases, but they have not forced themselves upon public attention. Now, there were two great measures of the last session, one a new charter giving to our mayor very thoroughgoing and peremptory powers. I won't discuss who had the appointment of the subordinates, and who is responsible for them; that depends a good deal, when we give these powers to the mayor, on the question whether we are going to have an honest count of votes to find out whether he is going to be mayor; and some Republicans who had the Republican party under their wing agreed with some gentlemen who had the Democratic party under their wing, that they would give the great power of the charter if they would give us an honest election under the registry, and the principle of this integrity, in the registry was this, that on the Tuesday before election the registration should cease, that thereafter the books should be open only to the entry of challenges, and that on the next Tuesday—election day—after this intermediate space of preparation, the integrity of the suffrage should be challenged; and now all they propose is to break up this intermediate period of challenge, and substitute for it an intermediate period of registration, merely formal, I suppose, for preserving the integrity of the bargain. They register up to Saturday night, having the inspectors of election become registrars, and these are all appointed by the mayor; and any-

body, on Tuesday morning, that has not been registered, may vote, if he is only able to say that he has not been registered. Now, that is very well, I say. That will be the destruction of this "Ring" that governs us; for all the feeble, and all the foolish, and all the faltering Republicans and worthy citizens, that believe in the thief's conversion at the last hour, will surrender any such doctrine in their future faith. But knaves like these never keep their word. Their promises may be as magnificent as you desire, but, as Mr. Burke says, hypocrisy can afford to be magnificent in its promises, for never intending to give what it promises, it costs nothing.

Now, we have a board of taxation which is elected by the people, as the matter now stands, but it is all turned over to the mayor, and we have a system of parochial schools, which is intended to introduce clerical education for the common people without cost, instead of secular education upon which the foundations of civil and religious liberty in this State and this country rest. I will occupy none of your attention with any dissection of these measures. You may throw away the independence of State separated from the Church, you may throw away the equality of education for the children of all; but we who think otherwise in this meeting and in this community, we intend to vote against it, and to vote hereafter against anybody in the legislature that votes for it. Now, gentlemen, I will come to a conclusion.

There is trouble about organization. In the first place, many good citizens, it is said, think we are malcontents and, I suppose, enemies of civil and religious liberty. In this meeting here tonight, I am certain that nobody feels greater respect for Peter Cooper than I. This very hall is a monument to his public spirit, his honesty, his worth, his virtue. But I am afraid that in his confidence some men in a small thing may be as good as he is; he is a little visionary. Gentlemen, we are not afraid of anybody unless they are in ambush. Then we are afraid of them. We are afraid of

Republican canvassers that count Democratic votes. We are afraid of Tammany Democrats and Tammany Republicans. We are not afraid of honest Democrats, whether young or old, and we are not afraid of honest Republicans whether or no they have this or that opinion on any other questions. With manhood untouched and every institution of liberty at our command, we will sound the bugle for the battle, and we will leave the field carrying our shields, or borne upon them.

SPEECH AT CITIZENS' CONVENTION, CHICKERING  
HALL, OCTOBER 20, 1871.

*Fellow Citizens:*

I have to thank you, absorbed as you were in your public duties, for not forgetting me in my temporary absence, and for giving me the credit of sympathizing with you, and having the disposition to do, at any moment and at all times, all that it is in my power to do, in aid of the great movement for the honest portion of the city against the corrupt government which it seeks to overthrow. I am sure that I have much more to learn than to teach in regard to this movement, though the subject of our corrupt government and the dangers to our institutions, to the peace, the welfare and the honor of this city, have long been subjects of reflection with me. Nor have I hesitated on occasions, fit or unfit as it might seem to others, to insist upon it, that this further temporizing with the corrupt tyranny was unworthy of our manhood, and a disgrace to free institutions; that calling evil, good and good, evil was an immorality that could no more prosper under a free government than under a despotism; and that it was the necessary conclusion of such violent and wicked usurpations of power, by peaceful, orderly and intelligent correction to restore the public safety, or, that alternative failing us, for injustice and corruption could never be a permanent form of government, since no alternative

remained to the community except violence and force, then by resort to that alternative. I believe the people of the City of New York now thoroughly understand the length and the breadth of the evil, the nature of the remedy, and that they have the courage, the constancy and the intelligence firmly and persistently to apply the peaceful remedies, that are to restore to the honest people of this city the management of their own affairs.

Now, the part that this body has to bear in this affair is apparent as well to ourselves as to the rest of the community. In movements of this kind there must necessarily be something of spontaneity; and this body, called together with no permanent or organized interests of its own, with no constitution of the party that is to be maintained and kept up, as a fit, it seems to me the most fit, representation of a great purpose and energy of this people now called to action in this emergency, must proceed, for the present occasion, without regard to party feelings, party interests or party recollections, and combine, as against a common foe, all the elements of resistance which are necessary to give any hope or promise of success to any part of the resisting power. For we must not underestimate the strength of Tammany in the suffrage and in the affections of a large portion of the political thinkers and planners in this community.

Now, there are various organizations all having at heart the purpose of resistance to our common enemy. Out of all these are some independent, some inconsistent elements, and the good sense of these organizations, and of the people of the city must, before election day comes, have settled upon some list of candidates, according to which and in support of whom the vote is to be cast for or against this corrupt government. I am sure that in this body, and I should not wish to feel any less confidence in regard to all other bodies, at the right time, and after due consideration of all the difficulties and all the claims on all sides, we shall come to a



conclusion that will present as single a ticket for the vote of the opponents to Tammany as Tammany presents to its adherents.

The question of how this city shall be represented in the senate and assembly of the State is the great and principal question, for the whole power of the government of this city, under our free Constitution, is lodged in the representatives of the people as they choose them. All our efforts through the courts, through the magistracy, through the forms and powers of law, are dependent upon the legislature, and so they are sure there to be corroborated, re-enforced, aided and made effectual, or retarded, embarrassed and defeated. And Tammany is applying its whole energies and all its calculations to the legislature of the State of New York. It is expecting by its own successes, by the counting of its adherents, to have a majority in both branches of that legislature obtained to do its corrupt purposes. It is our business to see that, neither from lack of patriotism, honor and intelligence, nor from want of industry, do we throw away any chance of having that legislature of the character, and the stamp, and the power, and of the courage that will furnish all the weapons that the legislature can furnish to the honest people of this city, of this State, to drive out of power these corrupt despots, to punish them by the penalties of personal expiation for their crimes, and to restore to the treasury of the city the plunder which they have taken from the citizens.

Now, that is the point of interest. Carry your legislature, and you have the halter around the neck of every one of these plunderers; you have the halter around the neck of every corrupt judge, and every timid district attorney. But throw away that power, and you have appealed to the people by the suffrage to choose representatives and they have chosen the friends of the corrupt government. If that catastrophe happens in this community, let us be sure that it does not happen through want of intelligence, of patriot-

ism, of self-sacrifice on our part, so that we may bear with dignity the curse which we have not contributed to bring upon ourselves.

But, gentlemen, let us understand, as I think Tammany understands, that in the union of the elements of opposition to Tammany there is no absolute assurance of success, and all the arts and all the influence which are incident to these political matters are expected to be brought into play to embarrass, embitter and create jealousies and difficulties such as to prevent this union. I believe the citizens of New York look upon this voluntary association of gentlemen in whom they have confidence, and rightly, quite as much as to any other organization, to see to it that tickets are properly made out and combined; that they have confidence in the intelligence and integrity that has been bestowed upon this election.

One thing more: The sooner such a ticket can be brought before the public the better; and if your committee have had adequate conferences with other bodies of citizens so that a ticket can be presented in whole or in part for consideration tonight or at an early meeting to be named tonight, so much the better. This is a movement of citizens at large. If this part of the matter can be properly attended to, I think I may safely say that before election day comes some demonstrations of the authority of law will be made with a precision and a directness in tracing plunder to the pockets where it now lies and it will help the public sentiment on election day.

#### SPEECH AT COOPER UNION, REPUBLICAN RATIFICATION MEETING, OCTOBER 25, 1871

*Mr. Chairman, Fellow Citizens, Ladies and Gentlemen:*

The crowd of honest, earnest men, which fills this hall on this inclement night, upon the call of the Anti-Democratic Committee, of the Republican Committee, for the ratification of their State ticket, opposing the Tammany

ticket, proposed for the suffrage of the people of this city, shows conclusively that it is upon the live and present issues of our politics that you understand the suffrages of the people are demanded. I am quite sure that there has been more sober purpose, more gloomy thought, in the minds of the people of the United States, regarding their government, their institutions, their prosperity, their safety even, during the last few years, than there ever were during the ninety years of our independence as a nation before. I am quite sure that those who understand the subject most fully, and the honest intentions and the common sense of the nation, know and understand that we are in the presence of a more powerful menace against our institutions than ever the institution of slavery or the War of the Rebellion placed before us. There we had an enemy that we could know and count. There we had an enemy that was furnished with deadly weapons aimed at us, but against whom we could aim deadly weapons with sure effect. But in the great crisis of our fate as a nation, which we are so suddenly brought in the presence of, unlike our great struggle for the integrity of the union, we do not know who are friends and who are foes. We do not know how many our foes are, because the falsification of the suffrage leaves honest men at a terrible disadvantage. There is no repeating on the battlefield. A man who answers his roll call there is apt to be somewhat courageous, but he never answers twelve times. But in the suffrage, see how you were opposed by the power of fraud, since the seizing the sacred vessels of the free government, and poisoning the draughts by which the very spirit of liberty is supposed to be kept alive.

Now, gentlemen, the two State tickets of the two parties are here. The great issue, the great fact, the great thought before the people of the State, as well as the people of the city, is corruption, and nothing else. And Tammany is corruption, and nothing else. And everybody knows it.

You know it, and all the people know it, and both State conventions know it. The Republican State Convention nominates this list of worthy citizens of their party, and the Democratic Convention had, at its meeting, choice out of its own party of those whom it would nominate, and it nominated the same men who filled the offices at Albany while the legislative corruption was going on, and while the legislative power was building up the scheme of fraud and wrong that Tammany conceived. I have no other statement to make, no other question to ask, in regard to the vote to be given, for corruption or against it, between these two tickets. These men have held authority while the institutions of fraud were perfected, and interposed no resistance nor remonstrance.

I have said that grave and even gloomy thoughts filled the minds of the people of the United States. Was it from any feeling of despair or doubt as to whether freedom was to be banished from the world? As to whether the education, the duties of the majority of the people were to become a scorn to the people of the world? No! But it was from the uncertainty in their minds whether the virtue that belonged to this community of ours—I speak of the whole country—could be aroused, by political authority to redress these monstrous wrongs upon our honor, or whether we ought to go through another war for that purpose. For be sure that a people constituted as the American people is, will suppress this corruption, either by peaceful or by bloody means.

All the efforts now being made, to enlighten and inspire the people of this state and of this city, by the orderly and quiet exercise of their rights as citizens, to determine whom they shall have to rule over them, and what principles they shall approve, are really in the interests of peace. And you, and all other bodies of reformers, and all other efforts at reform whatever they may be, if honest and sincere, are combinations to avail themselves of the principles of civil liberty to

rectify abuses in government. But if a nation is either so stupid or so cowardly that it will not use the weapon under its control, it deserves to fall; for corruption is not intended by God or man as an institution of government. It is mortification set into the vital interests of society and destroys them entirely. There are no institutions of government that can endure its touch, and you are therefore brought to the test of intelligence, vigor and manhood, to determine whether from any palaver of knaves or whether from discord among yourselves you know what the present fight is, and will insist upon pointing all your guns one way on the fort you are attacking in this election. What would you think of a fellow who was robbing your pocket on this side, telling you, by way of apology, that another fellow was robbing the other pocket also, and it was quite the custom all around, and you need not make a fuss about it.

Well, gentlemen, a good deal of talk on the subject of these abominable frauds, as everybody understands, is of the same sort. We are told that in other places and in other times the same thing has been done and is being done. But does that make it any more bearable because we have been robbed before? Now, gentlemen, is there a knave in Tammany, or in the city, engaged in and profiting by this enormous plundering, that desires the success of the Republican State ticket? I think not. Is there one of them that does not desire the success of the Democratic ticket? You answer for them. You know how that is. Let there be no confusion and no doubt, no coolness on the part of those who are endeavoring to sustain the credit and principles of this State, this city and of the free government by their course in this coming election.

Now political parties, if you please, tend to corruption from the possession of power. Agreed. And one reason why we have a frequent suffrage is that that tendency may be checked by the exercise of an intelligent supervision and cor-



rection by the people. How do they do it? By bringing the other party into power. And the fear of being thus turned out and the hope of being brought in by honest suffrage is the working force whereby the interests of freedom maintain a control over government. But when that last and final exercise of sovereignty of the people is attacked in its very essence by tyranny, we propose to preserve its power; and when the suffrage is falsified, I say to you that there is no crime of treason under any government, written in any book, or in the bloody scaffolds that history shows us, that deserves so deep a curse, and so swift retribution as the corruption of a free people. And why? Under despotic governments, the people are at liberty to strive and struggle for freedom of speech and the press; for freedom in religion, and the suffrage; and I never yet have known any tyrant that did not understand that the possession of all these weapons of freedom was death to tyranny. But here we have a nation, armed with every power that the wit of man or the goodness of God has given to a people to preserve themselves by. And yet these men laugh at you; they tell you in so many words that they will repeat, and repeat—miscount and miscount, and the freedom of suffrage is endangered to the utmost.

Now, gentlemen, what are you going to do about it? You cannot direct your attention to confirming your power as freemen. You have that already. But what are you going to do about it? If it comes to a miscount of the votes it will have to be before long a true count of bayonets. Now, gentlemen, the "Ring" and its parasites say that this direct talk to the American people is extravagant. They said so last spring, and a great many people have said, "What becomes of your reform meetings? These men have got the power and they go on." Well, gentlemen, if we had not begun in the spring we should not have fought in the summer, and carried the citadel, as we are going to do in the

autumn. And I think the feeling now is "What limit is there to what you are going to do about it? Is it the penitentiary? Is it to be scorned down and banished from the presence of freemen; or is it to be only the restitution of the money that has been stolen?"

Well, now, political parties fall into the conditions of factions, and then their usefulness is very much lost; and from faction it comes to conspiracy; and soberly, gentlemen, I say what has been called the government of the State and City of New York for the last few years, has been nothing but a conspiracy having no public views, no public policy, no public men engaged in it but a mere combination of men to rob you, and laugh at you while they are doing it. Some six months ago, certain people who took no part in the contest, satisfied themselves with saying that "Tweed was smarter than all the rest of you!" Well, that is a strange sort of pacification of the men who are doing all they can to correct abuses. Wickedness has waxed fat and kicked, and its doom is fixed. Would any one join the Democratic party today that never belonged to it before under the aspect it now presents? I have heard it mentioned, as a very laudable test of fidelity in a lover toward the mistress of his affection, that he should remain true to her after her beauty had been ravaged by smallpox. But did you ever hear of anybody falling in love with another who had the smallpox? And that of the confluent kind? I think that if the Democratic party arrays itself in its finest raiment, and puts a golden girdle about itself, that there is no danger of its overcoming our dislike while the signs and scars of corruption are upon it. I do not think it expects that. It can only go into the hospital and be cured of it at present. Would to God that corruption, like smallpox, could be had only once. I say, gentlemen, the corruption in our government has had no parallel in the history of governments. There is no king nor emperor in all the world, nor for the last hundred years, that

could have done or been detected in doing what these despots of the "Ring" have done, and maintain for himself and his courtiers the least protection from the vengeance of his subjects.

Now I have heard a great deal, and with interest, of the sympathy which our fellow citizens of the different nations have manifested in the struggles going on in their own countries—Italians, Germans, Frenchmen, Irishmen—against what they call tyranny. I would like to see some of them now interested to help this American people, and to save themselves from the tyranny being practiced on all foreign and native citizens by this despotic "Ring." We have heard much of the politicians feathering their nests as it is called, and the "Ring" has tried to excuse itself for a long time by saying all they have done was to feather their nests, and that the geese were expected to furnish the feathers. They said, "Whoever heard a goose complain of being plucked?" They got through this summer by the ordinary profitable operations of politics and it came to be very plain that they had taken out of the public coffers money in large sums; but exactly how large and exactly where it has gone—whether it has been divided equally between five thousand or a hundred thousand, or what number of people—nobody knew. The brave men of the press, the brave men of the people—to be honored hereafter if they are not now, as among the greatest benefactors of the people ever called for, or the public spirit of the people has ever furnished, did not wait for the suffrage and did not wait to ask permission of the Ring but demanded from the fears, from the terrors, that had taken possession of this "Ring," that the Treasury would no longer be in their hands.

We have put into the comptroller's office Andrew H. Green, a Democrat always, and a Democrat now, but an honest man always, and an honest man now, a fearless man always, and a fearless man now. He

holds the Treasury by operation of the popular will. Well, these citizens did not stop there. They thought that purpose and a little law might do some good. The attorney-general's authority was communicated to his associate counsel, Mr. O'Connor, and he holds that power by the will of the people. Now you see, if they will only stir themselves, they can do something as well as others. Is what has been done to be lost on the seventh of November? Are they to laugh in our faces and say "Well, you see we have taken the sense of the people and they are against you?" How long will Mr. Green sit there and let the people of this State express their approval of the "Ring"? Not long.

Well, gentlemen, I am able to say to you that some definite investigations have shown that having come, in the course of the summer, out of the vague euphemism of "feathering their nests" to stealing, we have been able to determine what was stolen, by whom and who got it. I will venture to say that in the figures you will see in the papers tomorrow, about which there is no uncertainty and no mistake and nothing obscure or equivocal you will see a more infamous robbery than was ever committed under any despotic government. You will see the plunder in the pocket of the robber. You will see that you are to be taxed to keep it there; to contribute your share toward this unlawful gang, and that it all goes to enrich the man who appeals to the suffrages of his fellow citizens to be elected to the senate of the State of New York. Now, there were three persons appointed to audit some claims. They audited them at \$6,000,000. The county was authorized to borrow the money to pay them. All that money was drawn out in the shape of warrants to the order of these people that were apparently creditors of the public, and all that money went to the holders of these bills; but \$3,500,000 of that \$6,000,000 was deposited to the credit of a subordinate clerk,



the common agent of the public plunderers and of that \$3,500,000, \$932,000 was drawn by him to the credit of William M. Tweed and deposited in his bank. Now the only mode of paying those warrants and the bonds, is by your and my future taxation and this is to be raised, so far as that million goes, to keep that million in Mr. Tweed's pocket and you pay your shares of it. Well, now, when I said that no king, no emperor, in Europe, now or for the past hundred years, could do a thing of that kind and face his subjects and preserve himself, his tenure of office, his dynasty, and his courtiers, did I exaggerate at all? But this man does not ask that he may keep his foot in New York, but that you should choose him your senator to make laws. He laughs at it; he goes among his followers and is received with rapturous applause. Did you ever hear of a king or emperor that laughed at his subjects because he had a standing army with bayonets? And if this man has a standing army with votes, may he not laugh? And who pays the standing army of the king with bayonets but the subjects? And who pays the standing army of this tyrant with votes but you and I by our taxation? And who sustains them except the people of this city with their suffrages? We shall have made some progress, however, when the bare finger of the public power can be laid without uncertainty upon Mr. Tweed, as having received a million of your money in this form—a million days' labor taken by him through plunder out of a fund that is to be replenished by the day's labor of a million workmen.

Well, now, gentlemen, you must understand that these things cannot exist and be known and understood, without somebody else being tried and condemned in the public scorn of the world beside Mr. Tweed, if he is chosen senator. All persons of this city who, with the explicit evidence of these frauds before them, do not seek to redress and punish them by taking part against the criminals are their accesso-



ries after the fact. I do not care who they are. I do not care whether they live on Fifth Avenue or at the Five Points, I tell you that anybody who does not do all he can, from now to election day, to prevent this monstrous infamy to this community, is an accessory after the fact.

Fortunately, the Republican party has no different feelings or interests. The ordinary party warfare carries it against the administration under which this has been done. A great many Democrats mean to do all that they can and we are to be tried as everybody that has to be tried, with the determination to go according to the facts, and I trust you know that if Mr. Tweed is chosen senator from this city all the newspaper paragraphs, all the Fourth of July orations from this time henceforth forever cannot alter the judgment formed by the lovers of liberty in countries across the Atlantic, who are straining their eyes to see what is to come of all this and to prevent them from concluding that the beacon of liberty has hidden its light forever.

I know of what I speak. I know that all through Europe there is an intense solicitude on the part of the common people that this defilement, this pollution, this infamy shall be shown to have been from the negligence of the American people, and that, when discovered, it can no longer be maintained or be repeated. If you could only know with what interest also the friends—perhaps the honest friends, but at any rate, the interested friends—of the despotic governments look at the same problems, which are now proceeding before their eyes, claiming that in the affairs of government the strong arm is necessary and that freedom is an illusion, and that they will find support in the result of your action, you would see then, how both sides of the European continent, in opinion, are dwelling upon this election to determine whether, or not, your country, my country, is the hope of freedom or is the danger to liberty that they may avoid.

## SPEECH AT COOPER UNION, NOVEMBER 2, 1871

*Mr. President and Fellow Citizens:*

I rejoice to find that as we are approaching election day the issues before this people are clearing up; that men's minds are concentrating upon their duty; that they are fully furnished with the evidence and the information according to which that duty is to be performed. I ventured to remark two years ago, in reproach at the great apathy in regard to public affairs into which this whole community had fallen, under circumstances that permitted me to veil the sad truth in a jesting garb, that all politics had suffered an eclipse, not total to be sure, but annular—nothing but a “Ring” being visible.\* I have had the satisfaction now to see the whole power of burning vengeance of political retribution escaping from its eclipse to blast the highest of these political conspirators. I have seen the “Ring” broken never to be renewed; and the full power of public opinion has been exerted, powerful and permanent, and to be effectual, to rescue this community from their degradation and ruin.

How far advanced we are from that state in which we were even six months ago! When we undertook to commence this great awakening I noticed from abroad these intense demonstrations of public power with gratitude that knew no bounds; and I noticed the attitudes and movements of these discovered rascals. Why, under the blazing power of this public indignation last September there was seen the handwriting upon the wall that shook the courage of these conspirators. What did their great soothsayer, who furnished the intellect and the brains of the conspiracy, say about it? Oh! this handwriting on the wall could be explained by natural causes; it was a mere phosphorescence, bred of mephitic damps of party warfare; it would blow over. Indeed! This wrath of an indignant people was in

\*New England Society dinner 1869.

the view of the complacent mayor nothing but a forgery and would soon be exposed. The next stage discovered, was spread all over Europe, the statement of the mayor that it was a Republican conspiracy to injure the credit of the City of New York, that they wished to borrow money and the Republicans thought that by injuring the credit of the city it would cripple the Democratic party. But all these follies and frivolities soon disappeared under the closed, peremptory and decisive accusations which filled the public mind, and satisfied the public intelligence that plunder, sheer and flagrant plunder had been the action of this conspiracy. And then we were told that all the vouchers would be printed, and put to shame this very accusation, and that all these administrators would act in the public interest, and everything would go right. But thanks to your intelligence, and your meeting in September, an end was put to all this foolish attempt to beguile and mislead the people and from that time forward every step onward on your path has been marked by defeat and retreat on the part of your enemy. By these accusations, which are too terrible to consider with patience, they were driven to that confession which rests in suicide, to that conviction which grows out of proof of the actual burglary, abstracting and destroying of vouchers.

Now, gentlemen, do not think for one moment that so great a crime, so clearly traceable to the party accomplishing it, ever grew out of any disposition to conceal the mere details of fraud. It was the desperate effort of men who saw the State's prison opening to receive them for the vulgar crime of forgery of vouchers which were destroyed. All records, all details on the books, satisfactory as they are to show the city's liabilities, do not answer the purpose of a forged instrument to be submitted to courts and juries to convict of forgery. That is the reason that burglary intervenes to protect the heads of this conspiracy from its condign punishment.

We are approaching the last act, which in the peaceful capacity under our institutions as citizens, we can perform in an election, and it is not too much to say that all the facts being known—the character of the men nominated being known, the opposing opinions and influences of good men being reconciled, and a solid vote to be thrown against this band of conspirators—it is the truth that our institutions and the value of them is the thing to be tried on next Tuesday.

Now I do not know which of two alternative results is the most terrible—the honest success of Tammany, or the condemnation of our institutions by fraud, if either of them should happen. If we have to believe that upon this state of facts and of proof, the actual majority of voters desire to continue these men in power and votes honestly put in and fairly counted will show that Hall, Tweed, Connolly and Sweeny have a majority,—if that be the fact, I do not see that there is much hope for our liberty and our equality of political power. If, on the other hand, we, the honest people, go to the polls in pursuance and in execution of the right and the duty to select our rulers, and we show a majority of ballots, which, fairly counted, would thrust from power these plunderers of the public, and the vote is not counted, but is set down as a majority in their favor, I do not see that that speaks very well for our institutions as they are administered.

Talk about the possession of power by the people! What power have the people, if the machinery by which they exercise it is wrested from their hands by falsehood and by forgery? Why talk about this scheme of checks and balances of power whereby tyranny is impossible and freedom is secure? Why, before the eyes of all the world, by this administration of crime and this administration of the ballot, all the checks in our system of government of municipal affairs are like the checks on the city treasury which these rascals have pocketed.

Now I wish it to be understood that you feel that such tyranny as thus demonstrated by this interference is intolerable and will not be submitted to.

The ballot is that which distinguishes a free government from a despotic one. It was only gained when despotism after despotism had been overthrown. It was that we should be taxed according to our vote, and if we are to maintain our independence as a nation, we must not be told flatly and squarely by these despots that we may vote as we please, and they will count as they please. If that is the case, they will pick our pockets in the future as in the past, and this even wise men cannot bear.

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The speaker referred to the divisions apparently existing among the party of reform particularly the religious prejudices, and thought that when a thief or highway robber had knocked us down we should not consider whether he was a Protestant or a Catholic, but turn our attention to apprehending him.



## XI

### SPEECH AT MASS MEETING HELD IN COOPER UNION JANUARY 11, 1875, TO PROTEST AGAINST THE ACTION OF THE FEDERAL MILITARY AUTHORITIES IN LOUISIANA

#### NOTE

During the period of "reconstruction" the continuous struggles between the "carpet-bag," military governments set up and maintained by the Federal power on the one hand, and the best elements of the native white population of the Southern States on the other, resulted frequently in a situation of anarchy and misrule with all the concomitants of violence and bloodshed. Perhaps, of all the Southern States, Louisiana was in a worse plight than any, and the bitterly exasperating conditions, brought about by the corruption and ignorance that flourished almost unchecked in all departments of the government thus imposed upon the State, led to atrocious and lawless acts of vengeance and retaliation, that went uncondemned and unpunished. Society, in its broad sense, presented in Louisiana, during the whole period from the end of the Civil War to the final adjustment under the administration of President Hayes, a revolutionary aspect. The revolution was held in check only by the presence of the United States troops; while, on the other hand, their presence and authority were a constant source of excitement and irritation. The situation attracted the attention of the whole country and was the subject of Congressional investigation. The incident that gave rise to the meeting at which Mr. Evarts made the speech that follows occurred while the members of a Congressional Committee of Investigation were present in New Orleans. The situation and the incident are thus described by Rhodes in his History of the United States, the substance of his narrative being derived from the Report of this Committee and other equally authoritative sources:

"In the autumn of 1874 an election for members of the legislature took place; on the face of the returns the Conservatives had

a majority of 29 in a House of Representatives of 111 members. But the returning board, an instrument of Governor Kellogg and Marshall Packard, found, after a session of many weeks, that 53 Republicans and 53 Conservatives had been elected while as to 5 seats they rendered no decision whatever." The historian then gives the following account of the happenings in the legislature on January 4, 1875:

"At noon the clerk of the last House called the roll of the present assembly; 52 Republicans and 50 Conservatives answered to their names. (A full house was 111.) Instantly thereafter a number of members rose but Billieu, a Conservative, held the floor and nominated Wiltz another Conservative as temporary chairman. Paying no attention to a point of order raised by the clerk he put the motion which was responded to by loud ayes and equally loud noes, but he declared it carried. Wiltz sprang to the platform, seized the gavel from the clerk, was sworn in by a justice, called the House to order and administered the oath to the members in a body. A clerk, sergeant-at-arms and a number of assistant sergeants-at-arms were appointed; these last appeared at once with badges bearing the insignia of their office. On a motion, which was carried amid much disorder, the five Conservative members from the parishes left in dispute by the returning board were seated. Wiltz was elected speaker and, after taking the oath, proceeded to swear in the members, but, as most of the Republicans had withdrawn from the House, only 60 members in all remained. Fifty were the Conservatives who had originally answered to their names, five more were those who had just been admitted and five were Republicans. These five Republicans undertook to withdraw from the hall. Wiltz ordered the Sergeant-at-arms to prevent their egress in order to avoid breaking his quorum of fifty-six. Meanwhile the disturbance prevailing in the lobby outside the bar of the House was increasing. On motion, the commander of the Federal troops was asked to preserve the peace. General de Trobriand appeared, accompanied by only one aide; a word from him to the crowd in the lobby restored order. The General retired; the business of the House went on. At about three o'clock General de Trobriand, in uniform, his sword at his side, and two of his staff in attendance, reappeared,

furnished with an order from Governor Kellogg to clear the hall of all persons not returned as legal members by the returning-board. He gave the speaker to understand that he proposed to eject the five members. Speaker Wiltz protested, but the General was inexorable. He called his soldiers into the hall and ordered the five expelled. With fixed bayonets the soldiers approached successively each member, sitting in his seat, and forced him to leave the House. Wiltz and the Conservatives thereupon withdrew. The Republicans remained and, after effecting a crude organization, proceeded to business."

General Sheridan was at the time in command of the troops in Louisiana, and upon his report to the Government at Washington of these proceedings, Mr. Belknap, then Secretary of War, telegraphed him, on January 6, the approval of the administration in these words:

"The President and all of us have full confidence in and thoroughly approve your course."

The news of this business was spread abroad by the press, and when it reached New York an indignation meeting was called to be held in Cooper Union on the evening of January 11. The hall was crowded to overflowing by an assemblage of citizens of all political parties. Mayor Wickham presided and William Cullen Bryant, then over eighty, was present on the platform and spoke. Mr. Evarts's speech on this occasion, as here printed, is taken from the newspaper report, appearing in *The New York Tribune* of January 12, 1875, and, though fairly well reported, is not as complete as might be desired.

#### SPEECH

I am quite sure, fellow citizens, that no Republican in this land can honestly complain that, in the call and purpose of this meeting, his party has not been treated with absolute consideration; for, if there was ever an occasion when an opposition party might seek to make demonstrations in its own behalf to the prejudice and disaster of its opponent, that opportunity was offered to the Democratic party by the conduct of the Federal government. The Federal

government is all Republican—the President, both Houses of Congress, the subordinate officers throughout the Union. In the State of Louisiana itself the government upheld in power by the Republican Federal administration is the Republican State administration of Governor Kellogg. Now, first, under ordinary principles of political responsibility, the Republican party being ostensibly responsible for the high-handed act of military subversion of civil government, our fellow citizens of New York have understood patriotism and love of liberty and obedience to the Constitution, apart from any political organization; and they have understood that no political act shall be rightly imputed to the responsibility of any political party until it has been submitted to their approval. You, therefore, are assembled here as citizens of the United States, to teach every political party that there are limits to their competitions and their antagonism, which no political party shall safely surpass; that when men vote, and when their chosen officers meet, and when, without violence and demonstration of insurrection, they undertake the conduct of the political government, no soldier can interfere.

And now, this nation emerged ten years ago from a great war, in which unmeasured contributions of blood and treasure were poured out in maintenance of the government of the United States. And why? Because the people of the United States were determined that the integrity of their territory should be preserved. And why did they wish to preserve the integrity of their territory, but that the Constitution of the United States should be upheld and obeyed? And now, every officer of a State, and every officer of the United States takes a solemn oath to sustain the Constitution of the United States. But there is one officer who takes the singular oath prescribed in the Constitution of the United States, and that officer is the President of the United States. And his oath is not that common oath that I have named, but

this oath of great authority confided to him by the whole people—that he will sustain, protect and defend the Constitution of the United States. And now, the Constitution of the United States, made for troublous times as well as peaceful, undertakes to furnish the means of power to the Federal government in respect of interference in the States. There are two very firm lines of limitation—observe!—which will protect the magnificent symmetry of our government, for the people of forty millions now, and of a hundred millions hereafter; and that is, that the sole intervention of Federal power within the province of State authority shall be to suppress violence, and that that office it shall not assume except when invited by the supreme authority of the State.

And that supreme authority of the State as named in the Federal Constitution is the legislature of the State. Is it only in the casual condition that the legislature is not in session, that the governor can represent the State in the demand? No; but only on condition that the legislature cannot be convened. In the situation whereby there is a recess of the legislature of the State of New York, as there is from the adjournment in April until its next meeting in January, the governor of the State of New York has no authority under the Federal Constitution to invoke the intervention of the Federal government, except in an emergency that does not permit his convening the legislature in extra session. The situation in Louisiana was that the legislature was in session; and the governor had no power whatever to represent that State in a demand for the intervention of the Federal officers. Have we been favored by General Sheridan, or by the cabinet at Washington, with any promulgation of an application made by the assembled legislature of Louisiana, for Federal intervention to turn some of their members out? I think not. It is only in case of an insurrection, or in case of a disturbance that amounts, in fact, to an insurrection, that the Constitution of the United States has provided for this intervention;



and it is only in support of that intervention, that the legislation of Congress of 1795 and 1807 has armed the President with authority.

And now for General Sheridan (and for reasons that I shall state to you, I do not ask that any special expression of your disapprobation shall be visited upon him) I should think it but fair to take his own statement of the occasion and of the manner of that intervention. It is unquestionably the fact that there was insecurity and alarm (for we agree that General Sheridan has no such timid disposition as that he would be likely to exaggerate the occasion or the fact of alarm), and that there had been some disorders in the State; but he uses this somewhat uncommon phrase in American parlance, that the military were present as conservators of the peace! Here was a national *gens d'arme* instead of the civil police officers; and wherever United States troops are to be found I suppose that they are to be considered to be conservators of the peace. This legislature being in session, and one party having elected a speaker, and there being disorder thereupon, and confusion, the speaker asked that some United States officer would speak to the crowd and disperse them quietly. General de Trobriand asked if that was their wish, and the speaker said yes; and General de Trobriand then spoke to the people, and in a moment there was peace. So, if there had been insurrection, it was soon over. And the thanks of this orderly body of the legislature of Louisiana were offered to General de Trobriand for his gallantry in maintaining the peace. Thereupon, Governor Kellogg, outside of the legislature (for he is not a member of it), asked General de Trobriand to take a file of soldiers, go into the legislature and take out five men who were acting as members of that body. I might be disposed to characterize, with some severity, the action of an inferior officer like General de Trobriand, or that of his superior, General Sheridan, were it not for a proposition of good government, known to us lawyers in a Latin

phrase—*respondeat superior*—the authority that directs the action of subordinates, must be held responsible; and I think that the President of the United States, under the official communication of his authority, through the Secretary of War “and all of us” is to be held to answer therefor. While there is nothing said in the Constitution of the United States about the authority of “all of us,” I suppose that Secretary Belknap drew “all of us” in to share the glory, although we did not assume the responsibility.

But the President of the United States has approved that act. Now, Governor Kellogg, if he gave that order and it was executed, deserves impeachment by the legislature of Louisiana. I would like to see Governor Tilden sending in a file of New York soldiers to take out the Republican majorities in the Senate, when it came to vote for United States Senator, and see whether a Democratic House at Albany, as it is now, would stand patiently by and see the privileges of the legislature violated. Well, now, I do not exactly like the form of argument addressed to citizens of the United States—as we all are—that we must not be unconcerned or careless about this action in Louisiana, for it may be repeated in New York. I do not like that form of argument to citizens.

I tell you, fellow citizens of the United States, that when it is done in one State it is done in all. The United States, it is our boast, in its frame of government, is vital in every part, and cannot be hurt in one part without injury to all. Supposing that this intervention of military power to break the action of independent State authority, should happen to be executed in Missouri or any other State, to take out a majority of the Electoral College when we were choosing a President, and by the subversion of the vote of that State, one man should be chosen instead of the other, what would you have then for civil law, vast multitudes of men being engaged on the question of a disputed presidency? The

President that would take his seat on such a platform, would have nothing but curses. For I say to you, fellow citizens, that the moment we come to complacency on one side, that profits by the action, and nothing but chagrin and disappointment at political success on the other, our liberties are gone. All the preliminaries of the elections are useless, if a usurper can step in and raise the question whether the usurpation will or will not be sustained. It is for that reason that this crowd here to-night is not Democratic—is not Republican—but is *American*.

Now, thus far we have only the President that has approved—though Secretary Belknap says it belongs to “all of us” but if the two majorities in Congress have no voice, no action, no authority, or if they adopt this policy, and maintain the right of a file of soldiers to decimate the legislature—even then I’ll not admit that the Republican party is to be held responsible for their action, until you have given us Republicans a chance to say and do what we will say and do also.

I have observed a growing disposition on the part of the depositories of political power to separate themselves more and more from the popular support of the party that gave them their authority. I see the first evidence of that in the warning to them, in the silence of our voters that has placed the Democratic party apparently in the majority in the most powerful States. But if the depositories of power of the Republican party are ready to put themselves before the country upon the constitutional proposition that a file of soldiers can empty a State legislature, under any of the circumstances proposed by any body, as prevailing in Louisiana, I think those representatives in power of the Republican party will find they have as few supporters in their own party as they have in the Democratic party. I think they will find it about as easy convincing the people of the United States that they must conquer their prejudice against

this mode of maintaining authority, as a good many politicians found in satisfying the people of the North that they must conquer their prejudices against the methods of the Lecompton Constitution. I remember speaking in 1856 at the first meeting to protest against the agitations which led to the great trouble in the country, and even six months afterwards in the City of New York, the sentiments, the opinions, and the ticket, that were presented at that meeting, had only one thousand votes. But how many years was it before it had votes enough to control every State in the Union, and had armies, and treasury, and united voices, without distinction of party, carrying it on triumphantly—for the maintenance of the Constitution? And we gained two things: That the American people never would submit either to have their territory mutilated or their Constitution corrupted.

Now, the laws of Congress require that whenever a state of violence in the State, to which the Federal suppression should be lawfully applied, exists, the exercise of that authority by the Federal government should be accompanied by a proclamation requiring the insurgents to disperse. Now, I believe a proclamation of that kind was issued some months ago, and they all dispersed. How long would it be, fellow citizens, that the Federal authority thus pronounced will be peacefully obeyed by a malcontent State population, having just such grievances, if they learned that the next thing that the Federal government does after they have dispersed, is to use violent acts in suppressing their insurrection; if their dispersion is only to make it possible for the Federal government to do by violence, with a squad of soldiers, what, if the insurgents had held together, the Federal government would have needed to have its whole army for? Isn't it the merest fraud in the world to carry back from this action in respect to this legislature on the fourth day of January to an insurrection of a few months before, dispersed by pacific separation?

Now, gentlemen, I have detained you too long. There are other troubles at the South in respect of which and their suppression, the Federal government is clothed with extraordinary power. By a late Act of 1871, whenever any combination or conspiracy exists against the State laws and the United States laws, to the effect of suppressing one of the rights, privileges or immunities of citizens of the United States, and the constituted authorities are either unable to protect, or, for any reason fail in, or refuse the protection, then it is lawful for the President of the United States to use the military and the army and the navy to maintain those violated rights. If, when the election of Louisiana was held, there were organized bands, combinations and conspiracies, which intimidated the poorer voters, which intimidated the black voters in the State of Louisiana, then was the time for the President of the United States to interfere and suppress those violent combinations and conspiracies, that trampled upon the rights of suffrage, though in the meanest voters.

I hope it won't be long before the City of New York, without distinction of party, will respond with the same voice and energy as to-night against any combinations or conspiracies that are framed with the purpose of intimidating voters of such State in the exercise of their suffrage. I shall be as ready to speak, my associates here of the Democratic party will be as ready to speak, at a meeting of that kind in that emergency, as we are to speak now. But we do not want, after an election is held, and when there has been no violence and no combination and no conspiracy, or, at least, no exercise of authority to suppress it, to have the authority exercised by emptying the legislature, because a military officer or President thinks that somebody was prevented from voting at the election.

The fundamental right of a legislature to control, to determine the qualifications and the constitution of its own body is of the very essence of legislative government. What use



is it to give the purse and the sword to the House of Commons or to the House of Congress, if the King or the President, by military power can determine who and what the House of Congress and Commons is composed of? And that is what they voted for in England; the indubitable ancient rights of Parliament to hold the purse, without any danger from the flame of royal power, that could determine the qualifications of the members of the House of Commons, and then, after a while, let the House of Lords assume the power and right to determine the qualifications of the members of the House of Commons. But in 1694 the House of Commons determined that the qualifications of its members were at its own final disposal, and that the ancient liberties of the House of Commons required it; and no King and no House of Lords has questioned this power of the House of Commons since. For these reasons the people at this time are justified in being concerned at this marked interference with the supremacy of the civil power over the military—with the independence of the State legislature of Federal government, and in the absolute abstinence of Federal power, except upon the invocation of the legislature, for the suppression of actual violence, and its withdrawal, necessarily, that violence should be suppressed.

Now, I do not know whether there is to be a sequel to this matter or not. I think not; but Lord Bacon said long ago that soldiers in peace were like chimneys in summer, and that only when the fires were lighted did they become of use. I should be sorry to think that there were any calculations that the patriotism of this people could be inflamed for political purposes, only by the larger and more virulent agitation that belongs to civil strife. But if there be any such sequel, let us see that it is summarily disposed of, and that the voice of this people teaches all its rulers that in time of peace all the powers, all of the authorities, all the officers, and all the magistrates, are servants of its laws.

## XII

### SPEECH AT COOPER UNION IN THE HAYES-TILDEN PRESIDENTIAL CAMPAIGN, NOVEMBER 1, 1876.

During the close of the Presidential canvass of 1876, the following letter signed by about two hundred of the merchants of New York was addressed to Mr. Evarts:—

*To Hon. William M. Evarts, &c.,*

DEAR SIR:—The undersigned respectfully ask the expression of your views at a public meeting, at the earliest time that may suit your convenience on the bearing of the pending election on the debt, the credit, the National faith, the reform of the public service and the repose of the country which we fear are being gravely endangered while the people are beguiled into a sense of security by unfounded representations and promises. It has been said that “the safety and wisdom of investments in the funded debt of the Government do not depend upon Presidential elections, in the opinion of European capitalists and bankers, any more than the soundness of English *consols* depends on whether the Ministry is Tory or Liberal.”

We do not believe that European capitalists are so indifferent to the lessons taught by our recent history as these words imply; nor that they ignore the fact that the time has passed when the great parties of the Republic were alike devoted to the supremacy of the Constitution and the perpetuity of the Union.

Europe cannot have forgotten that our Civil War arose from antagonistic views of the character and power of the National Government in its relation to the States.

Of that war the world is reminded to-day by the Southern claims already filed in the House of Representatives, amounting to hundreds of millions of dollars, that threaten seriously to increase the national debt, which, despite its large reduction, weighs heavily on the industry of our land.

These claims are urged partly on the ground which was taken by prominent Democratic leaders, North and South, including their Presidential candidate, that the National Government had no right to protect the integrity of the nation by the coercion of seceding States.

It is also to be feared that the election of Mr. Tilden might be regarded as a reversal of the verdict of the war, under which the southern people would be incited to claim their indemnity for their past losses and immunity in any further acts of secession.

Such a radical change in the policy of government would, in our opinion, not only impair its credit at home and abroad, and postpone indefinitely the resumption of specie payments, but endanger in the future our peace and prosperity.

Questions of such moment to the American people deserve the greatest consideration on national grounds by the light of history and the National Constitution.

The independency of your political position, your professional and public career, and your wide experience and acquaintanceship both in Europe and America, will give high authority to your views, and make them of the gravest consequence to the country in this hour of peril.

Praying an early and favorable response, we have the honor to be, sir, with the highest regard, your faithful friends and fellow citizens.

To this Mr. Evarts, on October 28th, replied as follows:

NEW YORK, October 28, 1876.

GENTLEMEN:—I have had the honor to receive your request for the expression, at a public meeting in this city, of my views on some of the principal questions which enter into the pending canvass for the election of a president and vice-president of the United States.

Although I cannot assent to your kind estimate of the interest or value to the public which the terms of your invitation attribute to my opinions, or their expression, yet I fully recognize the obligations of every man to take such part in the public discussions of the election as his fellow citizens may call upon him to do.

The earliest day which my necessary occupations leave at my command is Wednesday next, and it will then give me great pleasure to offer to the public judgment such considerations as

seem to me important and controlling on the topics to which you have invited my attention. I am, with great respect,

Your obedient servant,

WILLIAM M. EVARTS.

To John J. Astor, John Q. Jones, Robert L. Stuart, John A. Dix, William E. Dodge and others.

Before an audience that filled Cooper Union to overflowing over which Mr. William E. Dodge presided, Mr. Evarts delivered the speech that follows, as reported in the New York Tribune of the following day.

### SPEECH

*Mr. Chairman and Gentlemen:—*

The wise man has said that there is a time to every purpose under heaven, and in enunciating the vicissitudes of human affairs and the varieties of human conduct to which there was always an appropriate time, he has recounted a time to keep silence and a time to speak. The American people have long ago made up their minds that the heat of a Presidential canvass is not a time to keep silent, and is a time to speak. Whether or no I should have found, in special considerations, some reason to doubt whether I might not keep silent and might not refrain from speaking, yet when the call of these merchants, that make up so much of the prosperity, and pride, and hope, and energy of New York, assigned to me this duty, I could not but accept it. Nay, more; the developments of the canvass and its issues and the immense stake that turns upon the vote of next Tuesday, had satisfied me that no man, who could expect to take the ear of the country in the least, was justified in being silent. Whichever side he should speak on, he could not belittle or undervalue the occasion or the issue, and if his voice could serve, it should be heard while there was yet time.

By the methods of our politics, gentlemen, we are unable to separate the question, in the popular mind or in the popular vote, as to the party to which it would willingly

intrust the conduct of public affairs, from the other question as to what man or which men of the party that they prefer they would select. Necessarily, therefore, there comes to be some confusion of ideas, in drawing the distinctions between personal preferences, and measures of the force and faculty and strength of will and character of the opposing candidates, when, after all, the real question is and must be, which party will you have to take your government, to which will you intrust your interests, where is the safety of the Republic to be found in the period of the next Presidential term?

Well, in these contests of ours, so frequent and so familiar, there are always three interests that enlist more or less the popular feeling and the popular fashions. The first we may dismiss lightly—it is the interest of the office-holders and the interest of the office-seekers, intense and important to them and to their friends, and in the great mass of our offices, of course, an element of power and force in the community. But the commotion which these interests in their competition excite is neither very wide nor very deep. It does not much touch the public peace nor affect the public confidence. But beyond this, in all these Presidential elections, there is an enlistment of the enthusiasm and the admiration of the great masses of the people for one or the other of the statesmen of the country that are to lead the canvass. These sometimes go to a great height, and they sometimes simulate in solicitude, in earnestness, the real anxieties that touch the public welfare, and are influenced by the public safety. But these, gentlemen, we are always sure to find, never carry the agitations of the public mind beyond a limit that is quite safe to the public peace and quite consistent with the permanence of the value of the public securities, and after election—when even Henry Clay is defeated and Polk is elected in lieu of him—the agitations of the community subside, parties are all within the range of equal duty, and the peace of the country is undisturbed and its public credit unimpaired, and



generally speaking, and in the happy condition in which our country has generally been placed at Presidential elections, what I have now assigned is the whole limit and range of the interests and the excitements that attend an election; and, in that sense and under those circumstances, it is true that a decision, by the ballot, who shall be President of the United States carries no more peril to the public credit and the public peace, than in England a change from the Tories to the Liberals, or the reverse.

But when there does enter into a canvass, when, in the popular appreciation, there does enter into the canvass questions that touch at the vital point, the integrity of the government, the permanence and welfare of the State, then the agitations that attend that question supplant and overwhelm all the lesser questions that make up the staple of political discussions and differences. And the people of these United States determine for themselves, and know for themselves, whether, in the impending election, these vital interests are included or are not; if they are, the people will act up to them; if they are not, they, the people, will not down at the bidding of any master or teacher, foreign or native. I take it, the people of the United States know as much about Liberal and Tory politics as the financial agents of European houses in Wall Street. I take it to be possible that on the issues of American politics they know and feel a great deal more. As I have said, when these issues come in they give law to the contest; they re-divide the lines between the parties; they rally those who think the Northern people are better custodians of the interests that the Northern people maintain than anybody else can be, even their own countrymen residing in other parts of the country. Sometimes these issues come up late in the canvass. The good temper, the good faith, the honest purposes of the great mass of the American people make them slow to believe evil of any of their countrymen, so slow, in

their past history, that nothing but a war, that has buried half a million of their chosen youth and exhausted a thousand millions of their treasure could open their eyes. But we don't need two such eye-openers in one generation.

[Peter Cooper here entered the hall, and as he advanced upon the platform Mr. Evarts greeted him cordially. After the applause had subsided Mr. Evarts continued.]

Sometimes these great issues are stifled until it is too late, and then the nation has to fight its way back to a ground of safety, that it silently and foolishly surrendered. There was some danger of that in this canvass. The South had come to be so much exhausted in their strength, and all their animosities had been so completely burned out of them, and their leader, Mr. Tilden, our fellow citizen, so well known to us, had been so unwarlike in the past, and so hostile to the burdens of taxation that it was scarcely imaginable that there could be any threat to the public peace, any danger to the public credit, from the advances, even unopposed, of so peaceful and so placid a party candidate as that. But the American people, after all, when it comes to the point, had rather trust themselves than anybody else. And if a bear should propose to one of our backwoodsmen, after the bear had been worsted in a fight, to prove by experiment how the bear's strength had been exhausted and his hatred extinguished, by trying another good hug with him, I think the backwoodsman would prefer he would try it with some one else in his stead; or in some other form, say with a slip-noose around his neck, to see if he could not throw the bear that way.

Well, gentlemen, we are in the midst of a canvass, and simple as the call of the committee which has honored me with the invitation is in its terms, no one can fail to see that in the brief enumeration of the subjects of discussion which may be announced as matters touching the public credit, the public service and the public peace, we have a Presidential

canvass where the issues are of the vital and searching character that I have named.

I will first say whatever I have to say of the two candidates of the parties, and I will speak first of Governor Tilden, because I shall have the less occasion to expatiate concerning him, as you all know him as well as I do. But I have not one word to say in disparagement of his abilities, which are distinguished, or of the character of his mind, which is very marked; nor shall I deny that he has performed services of great value to the people of this city when he was fighting the Democracy, and that he also was doing a great service in the State when he was diminishing the taxes of the farmers; and I don't doubt that in those spheres of public usefulness he ought to be encouraged and continued by the people of the country. There he has made his fame, and whoever interrupts him in reaping the true harvest of those labors does him no service, and may do the country a great deal of harm. But the question is obviously very different whether Governor Tilden, at the head of the Democracy, a Democracy made up as it is, fighting the Republican party, is in the same line of usefulness that he was, when he was fighting Tweed and Tammany Hall. And there is room to doubt whether auditing the war claims of the Southern people will be as likely to diminish the taxes of the farmers as what he has done in the service of the State. These tickets then produced by Governor Tilden may entitle him to ride on some other route and by some other train, but not by this, nor to the White House. And yet I can conceive an arrangement of the Democratic party wherein Governor Tilden might be useful and safely its leader, even in the conduct of the great affairs of the Federal government. But I think the Republicans will prefer to choose a President of their own; and that the time has not yet come when they will elect Governor Tilden and a

united South. And if the Republicans don't elect them everybody knows they will never be elected at all.

Now, Governor Hayes is to me personally almost an entire stranger, but there are some traits in his character, some facts in his life, some purposes in his conduct which, when once recognized, make him or leave him a stranger to no true lover of his country. He is a gentleman of education. Whatever of instruction or benefit from instruction I received from the great masters of the law at whose feet I sat—Judge Story and Professor Greenleaf—the same advantage—and the same instruction Governor Hayes had. I should have been offended, if I had not been amused, at the philippics with which some large portions of our Eastern people—most of them, no doubt, Democratic, but a good many Republican—have felt at liberty to slight the personal claims and merits of Governor Hayes, because they had not heard of him. Well, but he had lived to be fifty years old—a man of education and of character, of high principle, possessed of every social and personal virtue—and the people in the city and in the State in which he lived had heard of him!

How many men had heard favorably of Governor Tilden while he was in the secrets and councils of Tammany and Tweed? And when Hayes, at the age of fifty-four, was discovered and made known to the great mass of his countrymen with thousands, nay, a million of intelligences burning upon his life and record, there has been nothing for him either to explain or explain away.

But let us see what are the traits that a people value in their citizens when they offer themselves for their suffrages. Let us compare his war record, for instance, with that of Governor Tilden. How many seasons would it have taken to overcome the rebellion if Governor Tilden, followed by the American people, had fought it on the line that he adopted? And how vast would have been the treasures

for distribution among the soldiers and sailors of the war, that were fighting for us, if his method of replenishing the treasury had been adopted! I am not disparaging the record. I take it as it is. But I say that he was not a foremost captain or general in arms; and when the country was in need, he did not hurry, with gifts of gold, frankincense, and myrrh, to its aid. That is all I say of him, and it is all that any of his friends claim for him. Well, now, there are a great many soldiers that become so from professional obligations. There are others, alas, that seek the service to repair a shattered character, and others that cannot find anything less dangerous and more profitable to do. But I put it to you now, gentlemen, as citizens of New York, whether when you find a man in a peaceful profession, in the bosom of a family, with his wife and children about him, possessed of ample fortune, with no military obligations whatever upon him, and that man enlists for the war and fights his way through it, if he has not done as much as America expects any citizen to do?

Why, take our fellow citizens in the organization for which we have so great admiration and to whom we owe many a real debt, the Seventh Regiment of this city. I think that all of those gentlemen and their wives and sweethearts, all thought they had done a brave and manly thing in going in for a three months' service of their country. I think their fellow citizens thought so too. I did for one, and I should not think, in any company of honest men, of depreciating that degree of military service on the part of those gentlemen, surrounded as they are with all that makes life attractive.

But Governor Hayes, with everything about him, enlisted for the war, and somehow or other, neither in classic times nor since, has there been supposed to be any greater honor than to be willing to die for your country, and I think Governor Hayes showed that willingness, and that touch of



patriotic duty can never be disparaged in any community of citizens, that were in favor of the war in which he fought.

But, they say, "He isn't a statesman." Well, he has been a very good candidate, and that is all we have to do with him at present. He has beaten in succession all the Democratic statesmen of the State of Ohio, every one of them, in his own esteem and in that of his fellow citizens, and in that of the Democratic party, fit, himself, to be a candidate for the Presidency of the United States. And he has beat them all. And it will be a little hard if—when he is running himself for the Presidency against a Presidential candidate, that none of those three great statesmen of Ohio of the Democratic party thought ought to have been nominated—he can't beat him. But his service has been great—thrice governor, and governor of the great State of Ohio, and thrice discharged the duties of the office without fear and without reproach. If he will do for us as President as well as he did for us as soldier, as well as he did for the people of Ohio as governor, we shall be sorry that he has precluded himself from a re-election.

Now, gentlemen, we come to consider some of the topics which touch really the call and the issues of the canvass. And, first, these merchants want to know what the effect on the value of the securities, with which their safes are stuffed, will be from the election of Mr. Tilden or the election of Governor Hayes. Now it is pretty clear that they would not have asked the question unless they felt some doubt, and it is pretty clear that when the merchants and bankers doubt, then the humble people that cannot afford to lose their share in savings bank deposits and life insurance companies had better be stirring themselves. The great fabric of the public credit sustains all values and all interests. It isn't to the interest of the rich when the poor man's property is shrinking and the rich man buys it. The rich man doesn't lose anything, but a pall is thrown

over the public credit; anxiety, solicitude, perturbation, occupy the minds of the masses of the people; then comes a rush and a crush, and a loss and a collapse. And many never rise from that change in their affairs, produced without their fault perhaps, but not without their fault if they have so blinded their eyes to party zeal as not to see the difference to the securities of a country whether its government is in the hands of those who sustained it in war or whether in the hands of those who fought against it in war. We have a homely maxim that a fool and his money are soon parted, and those who expose themselves to that folly and that loss of property come within that maxim. And it will neither console their self-complacency nor restore their property to know that so wise and so wealthy a man as Mr. Belmont thought so too.

Well, the two parties, or the one of them that is installed in power, will have to do with the public credit, and it is said that it is not altogether wise or prudent to trust the Republican party with the further management of your finances, your debt, and your public credit. Well, why? They certainly have managed them pretty well so far. The only serious complaint that I heard for years against the administration of the finances by the Republican party was, that they were paying the debt too fast, and taking too much money out of the people to apply to that object. Well, gentlemen, there may have been some pinch in that, but see what a bold and faithful step it was, facing the opprobrium of heavy taxation, insisting even upon the income tax, to pay the debt of the nation. Is it common for public servants to increase taxation with a view to public favor? But the great lesson was to be taught this people that their energies were not crushed by the war; that they were not impoverished, and that the slain of the war had not so thinned the ranks of labor, and the defection of the South had not so far reduced the volume

of our population and our wealth, but that we could honestly pay our debt and show that it was not a mill-stone about our neck. There was statesmanship for you. Expose a party to unpopularity, open this adverse criticism, but when a party could point to the expenses of the government regularly paid, and six hundred and fifty-six million dollars of the debt discharged, they could face the world of Europe, and they could meet any danger of another rebellion.

Well, we have reduced the interest thirty odd millions a year and we have reduced the taxation three hundred millions, so these merchants say, and it seems to me that as the possible increase of payments of the debt, decrease of interest, decrease of taxation, are multiplying on every side, that the wise people will let the party that has paid so much of their debt, diminished their taxes so much and the burden of interest on the unpaid debt so much, go on and do the same thing until they are tired. I never knew of a farmer discharging a hand because he had dug too many potatoes in a week, and I never heard of a merchant discharging a clerk because he could sell too many boxes of goods to solvent customers.

But insensible as any propositions of that kind are, hopeless of any influence on the public mind, there is another and a grave subject, to wit, the resumption of specie payments. Well, now, why is it that it is important for the people, especially a people made up of men who work, and thrive, and commence with nothing but the capital of their labor out of which to make their fortune—why is it important to them that they should have the value and the basis of specie for the measure of their labor? The law says that the currency—whatever it may be—they shall take for their labor. And when men print currency it is quite obvious there is not so much labor in the making of the dollar as what they shall do; but when gold and silver are the

measure of a man's labor they measure it not by the imprinting on the metal—for this is merely a certificate of the government so as to be understood by everybody that it is gold, and how much there is of it—it does not get its value in the mint: not a particle of it—it takes its value from other men's labor, because up to the last pennyweight of its substance it is the exact amount of somebody's labor that got it out of them. And when men have nothing but their labor in this world they like to be sure when they trade with it that they get a good measure of the poor man's labor in return.

But that is the reason the Democratic party was so wise and so popular, before it had occasion to modulate its principles to the getting of votes. It was the hard money party of the United States. It was the champion of the laborer, of the farmer, of all men who produced by toil a portion of the public wealth, and nothing has dismayed me more than to see the utter profligacy of a party that has thus allied itself, identified itself with the cause of the laboring man, and tied down the currency of the country by most useful enactments through a long series of years, now scouting the standard of gold and silver as an illusion and a snare, and holding that the measure of the printing press shall make the volume of the money that is to pay for the poor man's labor. I can agree to all diversities of opinion on finance, but I don't know what has happened to these Democrats to change their opinions on finance. I know they said this Legal-Tender act was unconstitutional. I know they said it would never be obeyed. I know they derided and decried it, and lamented that even in war a people could not pay specie to their soldiers and for the commodities of life. But now we are told, when men say that it is the interest of labor that gold should be the measure and the standard, that it is an oppression of the war. Now, they are not stupid. There is not a man in the country that does not know a gold dollar is a gold dollar, and that a

paper promise to pay a gold dollar is only of value because the gold dollar is expected to come some time or other. You can easily see that the denomination of paper currency is not going to amount to much if they are not to be paid. The promise to pay ten dollars or one hundred dollars not performed is not any better than the promise to pay one dollar not performed, nor as good as the promise to pay one dollar performed. And I have watched for fear I had over-rated the intelligence of my countrymen in this behalf, and I really do not find that there is any danger of the American people being fond of money without any intrinsic value, that is made for them of the fluctuating councils of a parcel of Congressmen who get the first hand in the distribution of it after it is made.

Now, does anybody doubt that the Republican party is in favor of specie payments? Does any one doubt that Governor Hayes is in favor of specie payments? No one. Isn't it very plain, then, that if we want specie payments you will get them from Governor Hayes and the Republican party? If you do not want them, why then you have your choice between voting for Governor Tilden and our esteemed fellow citizen, Mr. Cooper. Mr. Tilden professes to want specie payments, but not enough to hurt Governor Hendricks, not enough to name a time when he wants it, and not enough to lose any votes by wanting it. But Peter Cooper—honest man as he is and has been all his life—he professes not to want specie payments, and not to want it, all the time. So, gentlemen, when you look at this matter between the two parties you see at once that on this question of specie payments there is not any doubt on one side, and there is great uncertainty on the other. Now, the Republican party passed a bill, and one of its clauses was that specie payments should be resumed on January 1, 1879. It is the law of the land to-day and it goes on to say that the Secretary of the



Treasury should for prepare for and meet that duty, thus imposed upon him, by surplus from the revenue, or by the negotiation of bonds at a favorable rate of interest. Now Governor Tilden, before he entered the currents of Presidential aspiration, thought that that was a good law, and that one of the best things about it was its definiteness and certainty, and that the State of New York ought to go and do likewise at the same time and in the same manner. But now he has discovered that naming a day for resumption is an insurmountable impediment to having resumption. He says that resuming with preparing is nugatory, and therefore that preparing, I suppose, without resuming, is a great deal better and he shows that it is a good thing to name a day on which you will start on a voyage or a journey, but it is a great embarrassment to know when you will arrive at the end of it. I suppose that the steamers or the locomotives which are imagined or expected to draw people through in the regular time will be apt to burst their "bilers" in doing it. But this is not according to the common sense of the American people. I should as soon think of Governor Tilden ascribing his long unmarried life to the frequency with which he named the day for his marriage as to persuade him that having a certain time within which to prepare confuses and embarrasses the preparation. This Democratic profession of fondness for paper money—of fondness for Republican and unconstitutional rags—has always seemed to me the extreme of political effrontery, and I have seen some specimens of political effrontery sometimes, even in parties to which I have belonged myself. I think, therefore, that the bankers in Wall Street do not need any instruction as to whether the Republicans would handle the finances well, or whether they would bring about specie payments. They want some shrewd intelligence, if they could find it, that would prove to them that the Democrats would do the same thing, and I confess their

application to me to perform that service is a complete failure. I have turned it over in my mind every way that I could. I have read Governor Tilden's letter of acceptance backward and forward. I have endeavored to see whether you could get specie payments sooner with Tilden President, and Hendricks Vice-President, or with Hendricks President and Tilden Vice-President. I have endeavored to see what there was that could prevent the Democratic party from overthrowing the sentiments of the Republican party as to the time of payment, and spending the two years after the election of Tilden up to January, 1879, in getting ready, and by a Democratic Congress and Senate, if they have one, extending the time—say for sixty or ninety days, or some such short period. But I have been unable to understand it, and therefore my counsel is that the Republican party will take good care of the finances, and will resume specie payments; and that the Democrats will do as they shall be advised after the next election. Now, under these circumstances, as you cannot advise them after the election, I think you had better exercise your intention before.

Well, there is another topic of very great interest, too, and that is the civil service—the reform of the civil service. I think the past of the two parties is not altogether satisfactory on that question. I think that while the Democrats were in power, say up to 1860, they had introduced, developed, expanded, burned into the system of the politics of this country, the doctrine that the civil service belonged to the people that distributed the offices or controlled the votes, and I do not think that is a good basis for civil service.

Well, now, the Republicans had a great many things on their hands besides attending to the civil service. They suppressed the rebellion; they maintained the institutions of the country unbroken; they restored its peace; they have paid off its debt, and they have been found wanting in some degree in their conduct of the civil service. I

will not conceal or extenuate their faults, but I would like to compare the record of the Democratic party with a budget as big as the Republicans have had, before I will prefer the Democrats to them. They had a budget of sixty or eighty millions before the war. The details of the peculations and of the deductions, which those peculations made from the volume of that revenue, have been spread before the public. Now, before they compare themselves with the Republican party in the civil service and the administration of the revenues of the country, in that connection I would like to see them with a budget of three hundred millions to give an account of to this people, year after year, for twelve years. Or rather, I will take that back. I would *not* like to have them have that budget even for the purpose of making that record. I would rather concede the point than concede the budget.

Well, the future question of this country is precisely that—how we are to curb the power of the immense range of office-holders over the politics of the country? They are killing all the statesmen; they are belittling all the issues; they are degrading all politics; they are injuring all politics. But it is not a thing to be done in a day. The vicious circle has been keenly touched by Governor Hayes in his straightforward letter of acceptance; the vicious circle by which the placemen make the Congressmen and the Congressmen the placemen—and both leave the people out—has been touched, as with a needle, by Governor Hayes. And the first ground of my confidence in any physician to cure an ill or heal a wound is to be sure that he knows what the wound is. Now, I think you may search Governor Tilden's long letter of acceptance with candles and you won't find any declaration that he means to make war on Democratic placemen making Democratic Congressmen, or Democratic Congressmen making Democratic placemen. He says but this: "Their qualifications ought to be carefully scrutinized." Well, they have

always done that. All the talents and virtues that our poor humanity can collect about a man that wants an office won't pass the scrutiny, unless he has the qualifications which the Democratic party was the first to require, and will be the last to relinquish.

But you will observe that it is impossible that the Democratic party, who began this rule of the public service, should adopt this reform while all the offices are filled by Republicans. That would be too much for human nature. That would be a barren victory. That would be a division of spoils that they have never been brought up to. And, therefore, I see that an eminent Democratic statesman, in an address the other night, has prepared the ground for turning out all the Republicans, not on political grounds, but because they are all liars and slanderers. Well, gentlemen, we shall always have a reason—I am afraid too much of a reason—for both parties to urge. But the Republican party has a right to demand of Governor Hayes, if he is elected, with a whole body of officeholders, speaking generally, of the same political party with himself—they have a right to demand of him, nominated because he was in favor of civil service reform, accepting the nomination as given to him because he was in favor of civil service reform, that he carry out the work of weeding out the incompetent and the unworthy Republicans and filling their places with honest and worthy Republicans. And if there are not enough Republicans, filling them with honest and worthy Democrats. That is the war we are in for.

And now, gentlemen, this question does not much touch the public credit except in the sense of the public faith and of the interest and the affection which the people feel for their government, which has been sorely tried—I won't say during the last sixteen years, but during the last forty years—by the prevalence of what, I think, has been a dangerous postponement of the true political wisdom and ability of the

country to the interests of what is called in gross language "the machine." But that belongs to neither party. That is a struggle to a generation, and that should not be addressed to the party that did not invent it and that has struggled pretty hard to put an end to it. I did not understand that the position of Governor Tilden at St. Louis, by which he triumphed over his competitors, turned upon the ground at all that he would not appoint Democrats to office or that he would apply a rigid exaction of that competency and integrity which excluded political issues. I think we must conclude then, that all people that are honestly in favor of civil service reform will find in Governor Hayes a fearless, open, firm supporter of the principles which will lead to reform.

And now, gentlemen, I am brought to what would be the third topic of administration, as measured and to be expected from one party and the other—I mean the treatment of that vital question of the pacification of the South, of the pacification of the country, of the preservation of the efforts of the war, of the discharge of the obligations of good faith which the Republican party has assumed for one of the results of the war. But I am at once admonished that I cannot make the comparison between the administrative action or the administrative promises—between the parties—because the Democratic party, as a party, in its organization and in its action, has never done anything except to produce, to prolong, to embarrass the war. I cannot tell what they would do if they undertook the service of protecting these Republican lambs down South; I do not know what they would do with preserving the public faith in a debt that has been created in maintaining the government, and which is a burden upon the people; I do not know what they would do in regard to the maintenance unbroken of the right of suffrage in the freedmen—a duty to which the white men of this country can never be recreant, unless, at least, they are



ready to admit that the freedmen are better able to govern them than they are to govern the freedmen. I do not wish to be romantic, I do not wish to be exalted, but there is one thing that can stand neither the curse of God nor men, and that will be the desertion of the freedmen by leaving them a prey to the rebels of the South.

Now, gentlemen, as I do know what the Republicans will do, or wish to do—sometimes freely, sometimes insufficiently, and sometimes thwarted and opposed beyond their strength to overcome resistance—I prefer to advise the continuance of that duty in the hands that have thus far discharged it, and in the hearts that feel the obligation. I am therefore obliged, instead of pursuing details as to what will be the better course for the voters in their reliance upon the administration of this question, to meet at once what includes the whole. Is it safe for the people of the United States to intrust to the Democratic party organized and constituted as it is, led by the candidate that they propose for your suffrages, with the record of the party constituted as it now is, and of the candidate during the period of the struggles of the war, during the antecedent steps that led to it, during the process of pacification that has followed—is it wise to trust it to them at all? And I mean by that, not whether the nicest wisdom would so determine, but I mean whether if you trust what has been gained by so much blood sacrifice, and so much treasure devoted—if you trust that and lose it, when will you ever have blood or treasure to save your country again? Now there might be a Democratic party that would include a majority of the thoughtful and honest citizens of the Northern States, led by a candidate who, notwithstanding prepossessions, had leaped into the conflict of the country and sided himself with the loyal people to suppress the rebels. And there might be economic issues, problems of finance, problems of administration, that by

a measuring of class or by a large volume of superiority, the people of the United States would trust to that party thus constituted and thus led. I am discussing no abstract proposition, I am describing no abstract party. I am not saying a word against the thousands and thousands of Democratic soldiers that fought on our side, the thousands and thousands of Democratic voters that voted on our side, and who, for aught I know, may be all honestly and patriotically in their judgment voting here and there and now and then with the Democratic party, the party to which they were allied by birth or by habit. I am talking about a Democratic party made up in its preponderance of the soldiers—so far as there are soldiers in it—that fought against the country; and of voters in the mass who voted against the country and did not help, by voice or word, or support the maintenance of the great institutions, the sustenance of the nation. And I say that when the people that have gone through these labors, toils and sacrifices are by their own votes to determine whether they will reinvest with power the Democratic party that, in its constitution and its leadership is, in my judgment, wholly undistinguishable in principle or in make-up from the party as we expelled it from power, we are proposing a movement of this people that is intolerable to their self-respect, incompatible with the safety of the country, inconsistent with the maintenance of the Constitution.

It was thought to be a very good lesson of our war, and one that would not be forgotten, that men would fight as they vote; that if the mass of this people were determined that Abraham Lincoln should be President they would fight till he was President of the whole United States, to which they chose him. And they did it. And now the cool proposition on behalf of the Democracy is made to us same people that, although we fight as we vote, we won't vote as we fought. Well, gentlemen, if we won't vote as we fought, we will have

some reason for changing our vote. We will understand what the issue is, and if, understanding that issue, we make up our mind that we will surrender our character, our conduct, our hopes, our future, why we will do it, and on good reason. But we won't do it on any such foolish reason as that the Republican administrations have shown eccentricities, shortcomings, blunders, or faults. It is too narrow an inspection of a house to find these blemishes, and then determine to burn it down.

Well, now, is the Democratic party as now constituted, and as now led substantially identical with the Democratic party as constituted and as led when James Buchanan was President, and a solid South and a fragmentary North upheld it? I don't think you could search the record of a statesman of the Democratic party and find a closer analogy between his opinions, declared by himself, and the opinions which led the Southern people into the folly of armed resistance to the government and exposed the Northern people to the toils and sacrifices of its armed maintenance than between those of Mr. Tilden and Mr. Buchanan. There are no cerements of the grave about him, but that only proves that he is not Buchanan himself. There is the same halting between two purposes; the same letting "I dare not" wait upon "I would"; the same imbecility to suppress the rebellion, although you might lament it with a flood of tears. Ah! gentlemen, there is the same odor of denationality about him. Now the whole question whether the South—who could measure their strength and ours—would fly to arms against the government, was to be solved, in their judgment, by the question whether the government would fly to arms against them, and determine what it was by the Democratic party's saying that there 'was no license in the Constitution to do so, and that the moment a military rebellion took place that was the end of the Union. Well, gentlemen, a military organization, a military threat, is an easy

mode of overcoming the strength of a great people. But the Republican North determined the question whether a military rebellion against the government of the United States could be suppressed, and opened the question whether the resolution and the credit and the patriotism of the organized loyalty of the country was stronger than what Governor Tilden calls the organized revolution.

But we tried that, and it proved that we were not wrong. As was said by the lawyer to a client who came to consult him about his brother, and asked whether he could be put in jail on such a cause of action. "No," said the lawyer, "he can not." "But," said the brother, "he is in jail now." Now, whether we did it constitutionally or unconstitutionally, we did it, and judgment has been entered, and now an appeal is taken, and the Democratic party, submitting in arms, now says that it is going to show that all that was unconstitutional, and what the consequences will be of that correction of the law of this land, you, gentlemen, can judge as well as I if you are fools enough to have that correction made. I think the judgment we have got is a good one for us.

Now I have said—for I will be guilty of no injustice to Governor Tilden—that the turning point was, whether the loyal people of the country would find the right authority and power to suppress that rebellion, and the question, whether the South should be urged on to the fatal and inevitable step of military resistance, was to be settled by the attitude of their political allies North, in anticipation of the election of Lincoln, and during the period between that election and his inauguration.

Now I would like to have you understand what the Southern doctrine about this Constitution of ours is. Away back in 1798 the Southerners undertook to determine the doctrine which should last as long as they wanted it, and this is the doctrine: "But that, as in all other cases

of compact among parties having no common judge, each party has an equal right to judge for itself; as well of infractions as of the mode and measure of redress, . . . and that a nullification by those sovereignties of all unauthorized acts done, under the color of that instrument, is the rightful remedy."

Well, under the instruction of that doctrine, as prepared at the end of a generation, they consented to try it on and nullify on the tariff question; and now let me show you the advantage of having a Democratic President of the views of the Constitution that concur with ours and with those of the majestic march of the people of the United States to their triumphant maintenance of their country against the largest rebellion that the world ever saw. It was in the Democratic doctrine that the means was found to nip that rebellion in the bud without its ruffling a hair or increasing the dead or sacrificing the dying. Let us see then what might have been done when this Rebellion broke out had the incumbent of the Presidential chair been Gen. Andrew Jackson. Now, he was a good Democrat. I never belonged to his party, but he was as loyal to this country as any man that ever lived in it. As he says (I have read you the Resolutions of 1798 and I will now bring them down to modern time): "The Constitution of the United States, then, forms a government, *not a league*; and whether it be formed by compact between the States, or in any other manner, its character is the same." However it got to be a government, it is one, and now, supposing Buchanan had sent this exhortation to the people, hurrying to fight against their government. This is the exhortation which General Jackson addressed to the South in 1832:

"Tell them that, compared to disunion, all other evils are light, because that brings with it an accumulation of all. Declare that you will never take the field unless the star-



spangled banner of your country shall float over you; that you will not be stigmatized when dead and dishonored and scorned while you live as the authors of the first attack on the Constitution of your country. Its destroyers you cannot be. You may disturb its peace; you may interrupt the course of its prosperity; you may cloud its reputation for stability; but its tranquillity will be restored, its prosperity will return, and the stain upon its national character will be transferred and remain an eternal blot on the memory of those who caused the disorder."

We do not try to distinguish between the Democrats and ourselves in loyalty, in courage, and in determination. No; we try to distinguish between the Democrats that are loyal, courageous, and firm and the Democrats who were disloyal, timid and base—and that is a distinction that, so long as this is a free country, I propose to draw. And if the Democrats do not like it, they cannot like it worse than they like that exhortation of Jackson's, for I cannot beat that if I were to try all night.

Well, let us see now further, and we will come down to the year 1852; you cannot complain of that as so remote as the year 1798: "That the Democratic party"—this was the resolution of their convention—"will faithfully abide by and uphold the principles laid down in the Kentucky and Virginia Resolutions of 1798 and 1799, and in the Report of Mr. Madison to the Virginia Legislature in 1799; that it adopts those principles as constituting one of the main foundations of its political creed; and is resolved to carry them out in their obvious meaning and import."

Well what enormous courage they showed in carrying out those resolutions in their meaning and import; for when the first gun was fired, they all ran away. Well now with Buchanan, let us come along down to 1860. He gave his views about resistance to the government of the United States, after Jackson had given his opinion about thirty

years before. See whether it sounds in its sentiments like Jackson; and when you hear that, I will ask you to hear whether it sounds like Tilden. You may be sure if you think it sounds like Jackson, it doesn't sound like Tilden. "The question fairly stated is—Has the Constitution delegated to Congress the power to *coerce* a State into submission which is attempting to withdraw, or has actually withdrawn from the Confederacy? I have arrived at the conclusion that no such power has been delegated to Congress nor to any other department of the Federal Government."

He was too consistent a statesman to issue an exhortation in the language of Andrew Jackson denouncing the thunders of vengeance upon the people who did what they had the right to do. Now Black was then an eminent lawyer, and was in strict adherence to the Democratic party—the Attorney General. He says: "If this view of the subject be as correct as I think it is, then the Union must perish, utterly perish, at the moment when Congress shall arm one portion of the people against another, for any purpose beyond that of merely protecting the General Government in the essence of its proper constitutional functions."

Well, let us see whether Governor Tilden reminds you of Buchanan or of Jackson! Whether his constitutional opinions are like Buchanan or Jackson! Now, on the twenty-sixth day of October, 1860, at precisely the same stage in the Presidential canvass that we stand at to-day, Governor Tilden, then a private person, but of great credit as a doctor of law of the Democracy, wrote this letter—wrote it in the very stress of the incipient rebellion—wrote it because he then thought it would paralyze the North and make the South strike; he wrote it, but he wishes now he never had.\* Now, speaking of the States he says: "Each is organized into States, with complete governments, holding

\* See Letter to William Kent, Tilden's Public Writings and Speeches Vol. I, at page 295 *et seq.*

the purse and wielding the sword. They are held together only by a compact of confederation."

Now, does that sound like Buchanan? Buchanan did not write his message that I have read from until thirty days after this letter of Tilden. So Tilden is not a plagiarist; he set the copy.

"The single, slender, conventional tie which holds States in confederation has no strength compared with the compacted, intertwining fibres which bind the atoms of human society into one formation of natural growth."

Now, what a piece of rhetoric that is. If rhetoric could have laid the Southern ambition, that would have. Only think of the South relapsing back into "compacted intertwining fibres, which bind the atoms of human society into one formation of natural growth!" Well, they were compacted, and their fibres were intertwined into the form of regiments. He goes on to say:

"They recognized no right of constitutional secession, but they left revolution organized, whenever it should be demanded by the public opinion of a State; left it with power to snap the tie of confederation as a nation might break a treaty, and to repel coercion as a nation might repel invasion. They caused us to depend, in a great measure, upon the public opinion of the States in order to maintain a confederated Union. They intended to make it necessary for us, in reasonable degree, to respect that public opinion."

And now we come to the idea that strangled poor Mr. Buchanan:

"Especially is this true of a compact of confederation between the States, where there can be no common arbiter invested with authorities and powers equally capable with those which courts possess between individuals for determining and enforcing a just construction and execution of the instrument."

And now, in order to show that we Republicans did not, according even to Mr. Tilden's estimate of us, hold these views, he says—and he says it with regret—"But I cannot fail to see in the mind of every second man I meet among the Republicans the prevalence of ideas upon which it is impracticable to administer a confederated government." Well, now, saying that word of us—that we could not see the way in which the government was to stand if it depended upon the public opinion of South Carolina, and if these organized revolutions existed, and there was no right and no power on the part of the loyal communities to put it down—while Governor Tilden was turning his attention to the organized forces of revolution in disloyal States, some of us turned our attention to the manifest and noble pride which organized loyalty in the other States; and it is quite clear that if you get the patriotism and the courage and the majority, say of the State of New York, in favor of efforts to defend the government, then you will get an organized loyalty of the State of New York that fights with its whole power and counts against the organized revolution of South Carolina! Ah, but gentlemen, gentlemen, there was the trying point! There was the question, and Governor Tilden laid his finger on the very marrow of it. "Democrats of New York, touch not with one finger the unholy effort to use force to maintain the Government." And if we had not found a good many Democrats who looked at things as Jackson did, and not as Governor Tilden did, we never should have had the organized loyalty of the State of New York but it would have counted on the side of organized revolution. I was one of five men that on Tuesday after the firing on Sumter met in a private office in Pine Street to feel the pulse of this people, to arouse them, and call a public meeting, and we did not know whether we dared do it, lest the fewness of the number should be counted and the game should be lost; and then we did not dare to take the Academy of Music, for fear our shrunken

columns would display the poorness of the patriotism of New York. But by Friday, the 19th, we determined there was no building that could hold the loyal people—the organized loyal people—and on the twentieth day of April we had one hundred thousand men in Union Square, and there would have been one hundred thousand and one if Governor Tilden had been there. There were ninety-nine thousand nine hundred and ninety-nine without Fernando Wood, and he was there. We went on. We appointed a Committee of Safety. We actually hired steamers, raised regiments in our own name, with our own funds, and without the power of authority, and we fought it out on that line of our construction of the Constitution, and of Jackson's construction of the Constitution. And we have not hesitated to denounce anybody and everybody that thought or wished or felt on the other side, just as Jackson denounced those people.

Now, gentlemen, I have seen no retraction of these political opinions on the part of Governor Tilden. I have never seen any retraction of these political opinions on the part of the solid South, and if I get a solid South wishing to dissolve the Union—either for interest or hatred—I do not think I have got a very strong barrier against it in these opinions backed by Samuel Tilden, and if Attorney General Black should be recalled to that office I do not think you would get a very serviceable law to uphold this government, for he hasn't changed that opinion. Well, now, what have they to say in their own behalf on all these troubles, about the great aggregation of debt, about the claims of the South? That "the debts ought to be paid all around, losses ought to be borne, that bygones ought to be bygones, and that all the matter ought to be settled by putting us on an equality"—of common ruin, I suppose; I do not know.

Governor Seymour—and it is a most extraordinary recommendation for a party that is seeking the suffrages of the Republic against the opposite party—Governor Seymour



beseeches his countrymen to confide the executive branch of the government to the Democratic candidate, because, if he undertakes to carry out his principles, the Republican Senate will prevent it. And Governor Tilden says in his last letter that if the Democratic Congress and his party undertake to do these things he will veto them. I have understood that General Jackson was elected to veto a bank that the Whigs were for, but I never heard of choosing a President for vetoing the measures that his party were in favor of. Indeed, gentlemen, it may seem as if this Democratic party, as it comes mincing up to gain the favor of the American people, relies for the graces both of its contour and its drapery upon the same thing that our modern ladies' dresses do—the “pull-back.” What if the “pull-back” should break? As I never knew what might happen to a lady, so I cannot tell, if the “pull-back” should break, what might happen to the party.

I remember many years ago to have seen a story told by the Ettrick Shepherd in “Blackwood's Magazine,” of a couple of brave Scotchmen who went out boar-hunting, but their point was not so much the prowess of overmastering the savage boars as of getting into their dens and securing the succulent and savory food of the young. And one of them went into the den where he heard the squealing of the little young boars, and left his companion outside to look after the old boar if he should come along. Well, Sawney was brave, but his gun missed fire, and the boar dodged him and got into the opening of the den, but Sawney, with great presence of mind and great strength of body, seized hold of the boar's tail and twisted it around both hands and braced his feet against the side of the den. Well, his companion inside found the light darkened, and called out, “Sawney, Sawney, what stops the light?” Sawney was a man of few words, and had no breath to waste in explanations, and he says: “If the tail breaks you will find out.” Now I

cannot be any more explicit, but I am inclined to think on Governor Tilden's letter that if the veto breaks you will find out. Now the boar's tail was never made except for the light and fantastic play of keeping the flies off, and the veto was never made for the hard work of carrying on the government, and I think that the veto will break or, if it does not, that the resolute and set purpose of the men of strong convictions and strong passions that are to fill Congress with a united South will break the President if they can't break the veto. At any rate there is nothing in the story of the Ettrick Shepherd that encourages us to choose Tilden President.

Now Governor Tilden won't change his political opinions. They are bone of his bone and flesh of his flesh. He would no more change those opinions than I would change mine. He holds that the offspring of our Revolution in 1776 was but the litter of feeble States having no tie, but that it was severed when they parted from the mother country. I believe that there was then formed a mighty and puissant nation—the United States of America—by the grace of God free and independent of all the world, including South Carolina.

Now, about the ability of these people to keep these promises, see what was thought, in this letter, about President Lincoln:

"What will Mr. Lincoln do? Can he be expected, as President, to understand the state of things in any other sense than that of his own partisan policy? Can he avoid the attempt to maintain the power of his party by the same means which will have acquired it? Can he emancipate himself from the dominion of the ideas, associations, and influences which will have accompanied him in his rise to power?"

Well, now, Governor Tilden certainly would not expect the American people to give him credit for changing his

views or defeating his party, that he, speaking in entire good faith and with entire respect to President Lincoln and the Republican party, said would be impossible for Mr. Lincoln. Then let me give you the advice he gave to the people at the stage of the matter that we are now at. I shall only need to alter the name of the person spoken of to inculcate the injunction. He thus exhorts his countrymen:

“Elect Lincoln, and we invite those perils which we cannot measure; we attempt in vain to conquer the submission of the South to an impracticable and intolerable policy; our only hope must be that as President he will abandon the creed, the principles, and pledges on which he will have been elected. Defeat Lincoln, and all our great interests and hopes are unquestionably safe.”

I will reread it: “Elect Tilden and we invite those perils which we cannot measure; we attempt in vain to conquer the submission of the South to an impracticable and intolerable policy; our only hope must be that as President he will abandon the creed, the principles, and pledges on which he will have been elected. Defeat Tilden and all our great interests and hopes are unquestionably safe.”

Now, gentlemen, we Republicans made a record, and we incurred the hatred of a great many of our countrymen, and we were scorned and derided by the public opinion of many aristocratic classes in politics, but we triumphed, and everybody recognized the power of this country, its strength, knew that it was a nation, and had as much power to keep up its nationality as God has ever given to a nation in the world. *Semper potens armis et uberi gleba*—“Always powerful in arms and in the great area of its fruitful soil.”

And now they ask us to bring back the same people and the same President that we expelled, defeated and divided. A nation never will go back! A nation never will go back!

True, the English people recalled the Stuarts, and bore a shameful penance of twenty years for doing so, but then it was the army and the aristocracy that recalled Charles Stuart, and not the Puritans and the Commonwealth men. They did not vote that the Stuarts should come, but what have we? Human nature is the same. Whatever credit you may give to Governor Tilden as he seems to be in purpose, he cannot do what the party in Congress won't allow him to. It will be in vain that he says, "I came in by the votes of very many excellent Republicans who trusted that bygones were to be bygones, and nobody was to be disturbed, for I told them so, and now you are raising the old storm over their heads." "What do we care for that?" they say: "were not our heads bowed to the Republican storm for years?" What did the Stuarts do?

Cromwell had stood to England as Lincoln stands to America. Cromwell, by the universal consent of the present generation of Englishmen the greatest warrior that ever rallied the power of England, Cromwell is dead; Cromwell is buried. The feeble councils of the Presbyterians that were not Puritans and of the army that was neither Republican nor Royalist, recalled the Stuarts. Charles had promised that when he should come back that bygones should be bygones, that his toleration should be manifest, and nothing but peace and happiness should reign in "Merrie England." But what was the result? The armies returned, the Parliament was crowded with Tories and Royalists, and Macaulay, in a few words, sums up what came of the King's word and of his promise that bygones should be bygones.

"He therefore made a feeble attempt to restrain the intolerant zeal of the House of Commons; but that House was under the influence of far deeper convictions and far stronger passions than his own. After a faint struggle he yielded, and passed, with a show of alacrity, a series of odious acts against the separatists."

And the Ironside regiment, and all the stout defenders of civil liberty and religious freedom in England were ground under the heels of the restored party. And Cromwell—the dead Cromwell—was exhumed, his head was cut off by the executioner and displayed over Westminster Hall to show the justice of England! That head, the greatest in England while living was thus exposed—a terrible lesson to all feeble lovers of liberty, that like to bring back to power and dominion the foe they have vanquished. Now the annals of our time have changed, but the scorn, the undying contempt of the vanquished slave power will be dealt out to us loyal people if, after having had the courage and the purpose and the fortitude to rescue the country from them, we, by our willing vote, having the question in our own hands, decide to let them back again.

Ah, the old parliamentary doggerel describes well the wisdom, the prudence of the Constitution:

Methinks I hear a lion in the lobby roar.

Say, Mr. Speaker, shall we bar the door

And keep him out? or let him in

And take our chances to get him out again?

Well, gentlemen, I think you have concluded that I do not consider that either the public credit, or the public faith, or the public weal, or the public peace, or the public government, or the people of the United States will be as safe under Tilden as they will be under Hayes. And I say unto these merchants and bankers in the gross, that in my opinion of the prudent choice between the two men, I cannot occupy your attention tonight until the late hours with all the details by which, if not an absolute drowning of the public credit, a continual threat of that drowning would infect our securities in all the markets of the world. But I will put it bright and clear—that a people that by the suffrage, after having



had the courage to stand to their opinion of the Constitution, and having differed from Buchanan and agreed with Jackson and fought it out on that line, should vote back a President that agrees with Buchanan and meets the denunciation and scorn that Jackson would shower down upon him were he alive—that nation loses stability of purpose, courage in civil matters, prudence in affairs of State, and, although fighting brings out the great qualities of a nation, fighting doesn't improve the price of its bonds.

Well, Governor Tilden cannot be made President of the United States in any view of the canvass, without the vote of the State of New York. He cannot carry the vote of the State of New York, unless by the vote of the people of the City of New York and its neighborhood. And you, citizens of New York, not only now wield that vast power and influence that belongs to your wealth, your intelligence, your connections with the industry and the prosperity of all the land, but you have got the actual hold on the power itself, and as you determine, and as you act, from now onward to the 7th of November at sundown, will the determination be whether the city shall throw such a majority as overcomes the vast preponderance in the rural portion of the State. I speak as to wise men. Vote for Tilden, if you please, but vote knowing what will happen and what you are doing and will have done! I have never thought it possible that my countrymen, with the issue developed before them, in time could ever reproduce the phantom of Buchanan's likeness in the Presidential chair. It may be. It may be that on the 14th of April next the anniversary of the surrender of Fort Sumter and the anniversary of the murder of Lincoln, Governor Tilden may by the voice of a free people be its great Chief Magistrate. But I wouldn't believe it beforehand. And I hope I shall never have occasion to believe it afterward. It may be, but I don't believe it, that the

people of this country with this record of the political opinions of Mr. Tilden, and this record of the party that is behind him, pressing on their notice, may clothe him with the purple of their power, may put the golden chain of their public favor about his neck, and may applaud him as the man that this people delighteth to honor. But I don't believe they will, and if they do, the depth and the measure of their repentance, it is not worth while now to insist upon.

### XIII

#### SPEECH DELIVERED IN THE GARFIELD-HAN- COCK PRESIDENTIAL CAMPAIGN IN COOPER INSTITUTE, NEW YORK, SEPTEMBER 29, 1880.

#### NOTE

We close this selection of strictly political addresses of Mr. Evarts with one of his speeches delivered during the Presidential campaign of 1880. It is, doubtless, unnecessary to call to the reader's attention that no attempt has been made to include in these volumes all of Mr. Evarts's political utterances. Many of his speeches that made their impression at the time have suffered at the hands of the reporters and remain in fragments only. If any such attempt were made the result would be voluminous and of very trifling value. The selection here made will, it is hoped, give a living impression of his position in the public life of his time, his attitude towards the momentous questions of his day and his character as a political orator before a popular audience.

Although, at various stages of his career, holding high public office—as Attorney General at the close of President Johnson's term, as Secretary of State under President Hayes and late in life, as United States Senator from New York—it is but just to his memory to say that in each case these honors came to him unsought and that the choice met with general public approval. Though a public man he was not in any sense what would be generally designated as a politician; and though not a politician, he was from the first a devoted and staunch supporter and adherent of the Republican party and an unswerving believer in its principles and the doctrines it espoused.

Large audiences were drawn together by any announcement that he was to speak in a political campaign and the Republican press as a rule gave full though not always very accurate reports. Mr. John Sherman, one of his colleagues in President Hayes's

cabinet, repeats, in his "Recollections of Forty Years," an amusing remark by Mr. Evarts in regard to his political speeches, which Mr. Sherman characterized as "a refined specimen of egotism" on Mr. Evarts's part. In the campaign of 1879 for the election of Governor of New York, the Republican State Committee had asked Mr. Sherman to make speeches in several places throughout the State and he had agreed to do so. Mr. Evarts, however, in accepting a similar invitation, confined himself to the making of one speech in Cooper Institute. Mr. Sherman complained to Mr. Evarts, that he, a citizen of Ohio, should be expected to make several speeches in the New York canvass, while Mr. Evarts, a citizen of New York, was let off with only one. Mr. Evarts replied: "Well, Mr. Sherman, when the people of New York wish my views upon public questions, they arrange for a meeting in Cooper Institute or some such place. I make the speech and it is printed and is read."

#### SPEECH

*Mr. Chairman, Fellow Citizens, Ladies and Gentlemen:—*

The kind reception which you have accorded, in advance, to whatever I may be able to contribute in the canvass now pending, to the proper judgment of the American people on the great issue before them, inclines me to think that I was wrong in an opinion which I had intended to espouse, that it was the press that was the only potent orator in these popular discussions. By their magnificent enterprise and apparatus they speak to millions where we speak to thousands. By their perpetual possession of the public ear they lay down, line upon line, precept upon precept, in season and out of season, whether men will hear or whether they will forbear. The orator has no such hold upon the attention or the respect of the people. But I know that if one speak, even in a whisper, in the cause of his country, and for love of it, the people of the United States will catch up the sound; and wherever patriotism has not died out, and wherever liberty is not suppressed, and wher-

ever suffrage is honored and respected, they will carry on that voice, though lost in the final decision which has triumphed, or has faded away.

The question before the country, the question before this vast representative assembly, is, to which of the two parties that divide the United States the conduct of its affairs for the ensuing four years may be safely, may be wisely, may be hopefully, may be dutiably intrusted by a people loving its honor, respecting its duty, and the value of the institutions which we have inherited from a noble ancestry.

Twenty-four years ago the people of this country intrusted the management of their affairs to the Democratic party of the United States. Twenty-four years ago they trusted to a Democrat of Pennsylvania, Buchanan, the management of her affairs. To-day it is proposed to you that you shall restore the same Democratic party in the hands of another Pennsylvania Democrat. Twenty years ago the people of this country intrusted the management of their affairs to the Republican party, born of patriotism and devoted to liberty. Twenty years ago they thus intrusted their affairs to the hands of an Illinois Republican. And, substantially, the people of this country are to answer to-day the inquiry of their conscience, the test of history, the judgment of the world, whether they repent of taking power from Buchanan, and repent of giving power to Lincoln.

Active faultfinders may, in this process of twenty years, have had private or public grievances. There may have been failures of equality always to the greatness of the demands, but as history reads it, as foreign nations read it, as the great God-fearing people of the United States read it, if, next November the Pennsylvania Democrat is restored to power, it is a verdict that the people have tired of patriotism and are weary of liberty. Now, in these twenty years, the Democratic party, made up as it was when it was



trusted under Buchanan, asked—five times asked—to be restored to power, and five times the people have answered in the same way: “Never; no, never.” They tried it during the war, when the nation was in the throes of desperation, when every coward had joined the Democratic party—if he had a party—when every coward in the whole North was arrayed in the army of non-fighting traitors, and the people said: “It is sad to us that our youth have perished, and that our youth must perish; it is sad to us that mourners are to go about our streets for a whole generation; it is sad to us that the substance of this people, thrifty, industrious, fond of the pursuits of gain, should be poured out like water, and that, so far as we can see, the last dollar may be put forth. But we know what made our population what it was; we know what made our greatness, and we will maintain ‘Liberty and Union, one and inseparable,’ though the last man should fall, and the last dollar should be spent in the conflict.”

They asked again after the war was over, and after the resistance to the loyal government had taken the form of controversies about reconstruction, and the appeal to the people was that the Republican party, having fallen into a quarrel, and having on their hands a great impeachment and a great struggle within their own ranks, would now, at least, under this experience of vicissitudes of concord and union among themselves, trust power to the Democratic party united—no longer divided between combatants in arms and non-combatants in treachery—the united Democratic party—and the people said: “No. The party that carried us through the war, when you said it was a failure, shall conduct the government now, and you shall submit to it. And that you may understand what we mean, we put the great captain, who received your surrender, in charge of the Government.”

Well, four years went on and they said: “Now, our people are fond of a change.” So you thought when you took up

arms in 1860, and we showed you that we were not fond of a change. We loved our government as it was. We adored our country as it was. You then proceeded to try and inaugurate a change, and enforce it by the most telling arguments that the Democratic party ever issued—powder and shot and shell. No; we will keep the government so long as the Democratic party holds out the threat and presents the array, and avows the principles we have resisted up to this time. We will keep it in the hands of the same Captain of our armies that we trusted before.

Well, they said: "Now we have had long peace and prosperity." Long peace and prosperity! Think of the emphasis the Democratic party put upon that in the year 1876. "We have had long peace and prosperity." Why, do they suppose that we are a nation of red Indians to whom a few years of peace seem irksome and tiresome, and who desire a change. Did they suppose that when the laborers of the country, under the desperate tangle of our finances that the rebellion had brought upon us, were working upon half time and upon half wages, did they think that that was the complete prosperity that the laboring people of the nation should enjoy? We answered: "No; we will elect a volunteer soldier that never hid behind his charming family, but went to the war and served to the end, and we will trust him." Well, then, they said, "What can we do to please these people? We have offered them a change four times since they trusted Lincoln, and they said they would not change at all. Why, they must be a people of fixed principles. They must be a people that understand their own minds, and it must be that they can take care of their own interests. What an extraordinary people! A people, they say, wedded to such a continuance in well doing and with such a sagacious and persistent selection of the means of carrying out their purposes is on the very brink of despotism. What can save them—a people that chooses Republicans for twenty years?

Why, what can save them from the very abyss of military despotism?"

We thought that when, in 1865, we had ended the greatest war that modern times have seen, and when it waged against free and equal institutions by a military power, we thought that was nearer a threat of military despotism than anybody had ever dreamed of in the United States, and when we got out of it we thought we were rid of it forever, and we are. It is not now by the ranks of war and its armaments that they attempt to overpower you. It is by your own frank, generous, confiding natures, which, like charity, "suffer long and are kind," that they expect us to yield, from an unguarded people, what no powers in the world could otherwise take from the people.

Well, they said: "Only look at the alternatives we offered you. We offered you in 1864 a great Union General—General McClellan." Well, he was a great Union General, and the united South, in arms, not voting, and this desiccated Democracy that attended upon their will at the North said: "What, not take a great Union General? Why, what a pledge of fidelity, when you see as plain as day that if you only put yourselves under that great Union General, McClellan, the South will lay down their arms because they won't have anything to fight for, they will have gained it." An admirable suggestion to a people that is fond of peace and likes commerce and manufactures and a great deal of peaceful industry and development—a charming proposal! The answer was: "This candidate of yours is better than his party. He was only unready, but his party was untrue. But yet the great statesman that the affections of the people had twined about, that has written a more glorious page in our history than any other since Washington, that has made liberty universal, and has dispelled the shades of color and broken the lines of race, was a good enough President for us, though he was not a great General of the

Union Army, and had not been either unready or untrue during the country's trials."

Well, in 1868, they said: "We offer you a candidate now (always from the North)—Governor Seymour, a candidate better than his party." Well, that we agreed was true. But how under heaven should these people think—when ours is a government, not of men, not of kings, not of nobles, but of the mass of the popular feeling and of public principle that is represented in the Presidency—how, I say, should they think that a party could commend itself to the suffrage by saying its candidate was better than they? What a reason for taking a party, that is worse than the candidate! I don't know but our countrymen have eaten of the insane root and gone mad, but I don't think that any answers they made to that proposition in the past show that they have lost their wits at all. Well, now, Governor Seymour was better than the party. In fact, as he has gone on increasing in excellence, I think he is better than any party, or, in fact, I don't know but he is better than all his fellow men. That may be. I know he showed a very extreme instance of that forgiving spirit and humbleness of soul which are said to mark the Christian when, clothed with the sword of power and speaking in the name of authority, when your streets were red with the blood of innocents, he spoke to the rioters as his friends. Now, that suits a man for some departments of life, but not for the command of the army and navy of the United States.

Well, in 1872 they said: "Those people are very hard to please. We have offered them candidates that were better than our party; now we will offer them another candidate, a man who doesn't belong to our party at all. These Northern men," they said, "are of rather a melodramatic temperament. They like a show, and what could be a finer show than for a great party to take a candidate for the Presidency right off from the top of the other party. Well," they said,



"you must admit that that candidate is better than our party." They said: "We only presented you before a loyal patch upon a moth-eaten garment of rebellion and Democracy." "Well," we replied, "we admit that you have not presented a patch, but you have actually clothed yourselves in another man's garment," and we added, "our notion that the party that is in power ought to be in power, is the transaction which the American people pass upon in their Presidential elections, and we will vote for General Grant and not for Horace Greeley."

"Well," they said, "we have tried everything. Now we will have a man after our own heart, a man that does not come from the Republican party, a man that is *not* better than our own party. Who can tell about these fickle melodramatic Northerners, who are always running into scrapes for want of prudence, thrift and forethought—a people that you cannot keep out of the fire or out of the water?" And so they presented our distinguished fellow citizen and my classmate—Samuel J. Tilden. Well, that was fine. Now they say: "Look at him! See how we have come back to our true colors! Did you ever see," say they, "a pattern that was better matched by a patch on it than the Democratic party was by Samuel J. Tilden? Now you cannot object to that." "Well," the people said: "Let us look at that. Didn't you have an old ticket and a popular suffrage on it then twenty years ago—1856?" (For this Tilden candidacy was in 1876.) Let us look at that. Somehow or other, it strikes us that history is repeating itself, and that the same voters that voted for Buchanan are to vote for Tilden, and we will agree that, so far as we can see, in record and in temper, Tilden and Buchanan are as like as two peas. "Now, we have had that pattern before," the people said, "and we will choose Hayes."

Well, now, gentlemen, we come along down. At their elections the Democratic party has been made up of the same constituents—the solid South and the desiccated



Democracy of the North, and the people have passed upon them as such. And now they present again the same combination—the solid South and the desiccated Democracy of the North, neither more nor less—and they have chosen a candidate, saying: “Having tired ourselves with pleasing you by offering every pattern and patch, we will give you another candidate that is better than our party.” Indeed, a very eminent public thinker and writer, who seldom speaks within bounds, has thought to frighten the people of the country that espoused the Republican candidacy by saying that our candidate, God bless him! General Garfield—this is the crushing criticism upon him—is no better than his party. Well, we thought so, we thought so. We thought the party was as good as could be, and that, while it could find in its ranks and in its lead many men that were worthy of its honors and of its votes, we really must be excused from saying that we could find any one man that was better than the great Republican party.

Now, this is an extraordinary business. The Democratic party, conscious of the beam in its own eye, and knowing that there is not even a mote in the eye of the Republican party, has sought to make a balance of the beam in the Democratic party against the mote in the Republican candidate. Well, that is an extraordinary situation! A whole party trying to make a balance out of themselves against what they charge as a blemish in our candidate! They try to make a balance against the enormous iniquities unrepented of and not yet laid aside; every epaulet, every plume, every ruffle, every cartridge-box, every sword-belt, every holster still surrounding the Democratic party in its relation to our institutions and our prosperity, they think to overcome by drawing attention to what they call a mote in our candidate.

Well, gentlemen, when Mr. Black, desiring to help his party, said that Garfield personally was one of the honestest,

warmest-hearted, most guileless men that he ever knew; that he was a man of genius, of learning, of eloquence, of popular power, he knew where to put the only arrow that could pierce any harness of our candidate when he said: "But, good as he is, he cannot in politics and in government be any better than his party." Now, General Garfield stands before the American people as a candidate for its highest honors upon a plane of longer and more varied experience, of better proved capacity, of larger benevolence, of a comprehensive mind, and a tender heart for his countrymen's difficulties and dangers and sorrows, than any candidate that has been presented to the people of the United States by either party since Henry Clay. I had occasion to remark four years ago on the superciliousness of our Eastern people here—New York and New England, and the Atlantic board—of taking it for granted that, because the candidate lifted up on the shoulders of the great people of the West was not as familiar to our observation and as clear in our estimate as one of our great men, of assuming that he was not so fit as he should be, and voting in the dark against him, as so many did against President Hayes. But now that he has stood in the light for four years; now that his countrymen and the public men of Europe have estimated his public services, and when our people feel the full rush of honesty, of fidelity, which brought prosperity to the very finger-ends of every man in the land, they begin to think that if they had known President Hayes as well four years ago as they do now, he would have had a larger majority. We had the same talk about him then that they would like to engage you in now about General Garfield. They had the same talk about him then, I say, that he seemed to be a good man, but they did not know exactly by what counsels and advisers he would be surrounded. They did not know who was to lead him, and who was to push him, and who was to guide him; and as they

saw various adventurers, leaders of the party, that looked as if they would like to have a share in the government, some of whom they liked, and some of whom they did not like, why, people said, they would vote in the dark until they knew who was going to manage him. Nothing has managed him but love of country, an upright nature, a sincerity in the homely virtues of American common life that will long be remembered in the affections of the men and women of the United States.

Now, people begin to say—Democrats—“Oh! If your party had only renominated President Hayes, why, we would not have stood against him; he has the hearts of the people. But as for Garfield we don’t feel so sure.” In other words, they feel about Garfield now as they felt about President Hayes four years ago. And four years hence, they will feel about Garfield as they feel about President Hayes now. They used to be, in following the Republican party and adopting its credits as belonging to themselves, at a safe marching distance of about twelve or eight years behind them, but now they are beginning to crowd us, for they are only four years behind. If they will only keep on and study our step and learn our music, it may bring them abreast of us some time or other.

Well now, having discussed General Garfield, who is *not* better than his party, let us look at General Hancock, who *is* better than his party. General Hancock is a great and faithful General of the armies of the United States. He was a faithful General in the war, and in his place in the army he has been a faithful General since, and no Republican seeks either to obscure or belittle his claims upon his countrymen. But when General Hancock is sought to be the “make-way” to bring up the party whose candidate he is to the standard of a party like ours, that has seen a Lincoln, a Grant, and a Hayes, he has got to have a great deal more avoirdupois to weigh us down.

What do these people think a change of party government means? Is it, as some of these palaverers would have us suppose, a toss of a copper or a wave of a hand, and all is over? Is that so? Is that what a change of party means; what a change of parties in a great nation like this means; what a change of parties from one that preserved the country to the other that attacked it—is that all that it means? Does it mean nothing to the poor freedmen of the South whether, all else being against them, the Federal Executive is to be against them too? Does it mean nothing to the loyal people of the country, to the heroes in your fights, to the leaders in your cabinets, and to the memories of the great statesmen that have passed away, whether the American people are to put that party and those memories and those living statesmen to an open shame; and whether they are to exalt over their heads the party that, in the name of the people and with the people's power, we have resisted until we saved the country through war and preserved it from disasters of peace? I tell you, gentlemen, that the relations of a people to their public men and of the public men to the people are reciprocal; and when a nation turns its back in prosperity upon those who never turned their backs, in the field or in the cabinet, against the enemies of the country, the people has gone over to the side of the enemies of the country.

Manners change in different ages; but this affair of a transfer of power from one party to another, diametrically its opposite, is, with a proper allowance for the difference of manners and the ameliorations of life, pretty much the same thing. And, as I remember but one great character in history that received from his countrymen the surname of "The Superb"—only one,—"*Tarquinius Superbus*," of Rome—I thought I would see whether history, that had repeated itself here with this magnificent title,\* would not find some other

\* General Hancock had been popularly spoken of in admiration as *The Superb Hancock*.

traits of resemblance in the transactions of Tarquinius's government.

The King of Rome that preceded Tarquinius had made a change in the Roman Constitution in favor of popular rights. He had endowed with a share in the suffrage and in the commonwealth the plebeians, and it was a thorn in the side of the haughty classes that domineered over them that the poor plebeians should be trusted with the suffrage. Now, I think that Lincoln did something of that kind for the poor plebeians of the South. I think the Republican party has done, not only something, but all that its power thus far has permitted it to do, to establish those popular rights—to be sure only in the hands of the plebeians. Tarquin came forward and slew Tullius, and the great reformers that represented the people died by the hand of the assassin, and then, when he had thus got power, he at once took away from the very plebeians every vestige of their rights. He put to death all Senators that had voted for it. He took into his hands the whole administration of justice, and he slew or exiled all that were obnoxious to his will. Well, gentlemen, let me say for the Roman people that Tarquinius Superbus was the last king that ever sat upon the throne in Rome and until the time that Brutus completed the assassination of Cæsar—down to that time there had always been a Brutus that would brave the eternal devils to be King. Now, as I say, manners have changed. But the principle of human nature is the same which makes the gulf so wide between the principles of Servius Tullius and Tarquinius Superbus, and so wide the gulf between the principles of the party of Abraham Lincoln and the party of General Hancock, and change of parties does not pass like a summer dream. No, it is to be from our hearts, if at all, and, thank God, it is to be only if we have the will to allow it.

Now, gentlemen, we have candidates also for Vice-President, and I take Mr. English first. I have never seen



any very open or public avowal of why the Democrats nominated Mr. English. He was not in our minds at all. I do not know that his countrymen were turning him over among the men that they thought the Democrats could nominate. It will not do to put it wholly upon the fact that he is a rich banker, and so we look at the speeches he has made in Congress twenty years ago, when they talked about abolitionists and about the blacks and about the plebeians in the fashion that the old Democrats used to talk about our notions of befriending the people. There did not seem to be any reason for his nomination to be found there and I leave it for his neighbors, who have expressed their minds about him, whether there is anything in that large liberality of personal character which makes a man popular, in spite of the badness of his political principles. I do not understand that there is a very wide claim on that score. I do observe in his letter of acceptance that he seems to be of a very sympathetic nature—feels for the sufferings of others—because I observe that he expresses great interest in the toiling millions of his countrymen. Well, these are trifling matters, perhaps, but yet they do show whether a party is sincere or not; and when I saw that Mr. English had this yearning of heart for the toiling millions of his countrymen, I could not but think of a story that our excellent judge, Judge Brady, is fond of telling at the expense of our profession—for there is one good thing about us lawyers, that we do repeat all the jokes against ourselves that we can pick up. Well, a young man who had lost his father, and had yet a small estate of fifty dollars from a solvent debtor, that still he needed to collect by law, waited upon a lawyer in the village, who he knew was a friend of his father, and asked him to collect it. The lawyer received him as only a lawyer knows how to receive a client and admitted frankly that he did know his father, and that he loved him as a father, and nothing would give him greater pleasure than to collect that

little bill. So, when the process had brought in the money, word was sent to the young man that the debt had been collected, and that he would be glad to pay it to him deducting the costs, and so the lawyer handed out to the young man, who was full of gratitude, fifteen dollars out of the fifty, at which he seemed a little dazed in counting it, and the lawyer said, "Why, is it not all right; are there not fifteen dollars there?" "Oh, yes," says the young man, "there are fifteen dollars; I was only thinking how lucky it was for me that you didn't know my grandfather." And I could not help thinking how lucky it was for these toiling millions of our countrymen that only a few thousand of them were within the immediate friendship of Mr. English.

And now General Arthur, our townsman and our friend, is proposed to make one more in the long roll of Vice-Presidents that New York has given to the nation. Everybody knows of General Arthur that he never sought an honor, but took only such as came to him by the free-will of his fellow citizens; everybody knows that in the lead of the great administrations of our political affairs, he has been trusted and honored, and the people of the United States accept this candidacy from this, our great state and city, and, knowing of his character and position, intend to make his term the ninth Presidential term that has been filled by Vice-Presidents from the State of New York.

Now, gentlemen, let us see what are the great questions before the people. In the first place, let me submit to your intelligence that the people of the United States do not need to be asked to reconsider any of the decisions that they made in 1864, or in 1868, or in 1872, or in 1876. Those have passed into the judgment of their countrymen, and the people have said that the Republican party should keep power, notwithstanding anything that could be urged, with reason or without, by hypercriticism or by honest discontent, that the party, the great party and its great and honest leaders,

should be kept in power at all those terms. Now, if I am right in this, what ought always to be the great question for a people practical in their tastes and interested in their prosperity? It is, what shall we say of the party as it has administered the government for the past four years? What shall we say of the Democratic party as it has exhibited itself in the last four years? Is it wise, is it prudent, is it for our advantage that the government should run on for four years more in the conduct of that party that has guided it four years, and in the same way that it has been guided for four years? Has the Democratic party, that we condemned during all these previous stages at which our judgment has been called for, has it, in the last four years, helped our credit, helped our peace, helped our public faith, helped our prosperity? We do not need to be told that we live under the government of a good God. That we knew, even when the Democrats were racking our hearts with sorrow, and rifling our coffers of wealth. It was not a good God that we turned upon and cursed. It was the Democratic party that we turned upon and cursed and defeated, and when this general and universal Providence, protecting us all through a great party, has, in what belongs to government, in what belongs to prudence, in what belongs to honesty, in what belongs to human wisdom, spread the golden mantle of peace over the whole country, filled out granaries and our warehouses, lit up our forges, set a-whirling all our spindles, and asked even for more means to employ the industry of this people, this people are not to be turned aside by saying that it is all a good Providence that did that.

Well, to bring it down a little more concisely in this Democratic devoutness, it seems that we have been living under a financial theocracy for the last eight years, and that John Sherman was favored by Providence as the best man to carry out the purposes of the Divine wisdom. Well, Mr. Bayard thinks that that doubtless was a mistake on the

part of Providence, for he ought to have been the prophet under this theocracy. Well, gentlemen, if the Republican party has carried on the government thus prosperously and to these results by the special favor of Providence, did you ever hear of a more illogical reason to a people than that they should turn them out because Providence was on their side? Do the Democrats expect to get along against Providence or without Providence?

But away with these frivolities. No doubt Providence causes His sun to shine upon the evil and the good, and His rains to fall upon the just and the unjust; but, nevertheless, the farms of the drunkard and the sluggard do not show such a smile of Providence as the farms of the thrifty and the laborious and the temperate. Did not this sunshine and rain fall upon the wide areas of agriculture when our corn was used to burn for fuel, because confidence was destroyed in the country, and it could not be moved to the hungry demands of Europe? But what moves the crops? Is it the railroads and the steamships? Why, the iron tracks and the trackless paths of the ocean were as open at those times as at these. Why is it that there was no capital, that there was no enterprise? Why, there was capital and there was enterprise, but the unextricated snarl of our finances, brought about by the war and perpetuated by Democratic obstructions in peace, had frightened capital, and it had hidden itself in the six per cent bonds of the United States. And then when following in the same path with Abraham Lincoln's Secretary of the Treasury, we set our faces toward John Sherman—favored by his countrymen and favored by Providence as well, no doubt—when he carried through that magnificent financial march to the broad sea of prosperity, which rivals in the fame and in the gratitude of his countrymen that military march that the great Captain, Sherman, took to the sea then he unbound capital and enterprise, then he dislodged it from its safe shelter under the six per cent bonds

and reduced it to the scanty pittance of four per cent, and drove it out into the activities of commerce and the risks of manufactures. And then you had the circle completed as distinctly by this final touch of the human prudence, sagacity, fidelity, and courage of the Republican party, just as distinctly as the natural philosopher completes the circuit of the electric current that surrounds the world.

Now, I would like to know how much the Democratic party did to help Providence out of its difficulties. I am astonished at this element in party politics. Why, everybody knows that the conflicts in England and in this country are based upon this proposition—that the party in power is to be blamed for its faults, its errors and even its misfortunes, and that it is to receive the honor of its fidelity, of its wisdom, of its prosperity. And this is the first time that statesmen, who valued their public character, have gone through the land prating against a party's right to the honor of the things that it had done. Let them say that they will do better—let them say that they will do better *against* Providence than we have done *with* it. Let the country trust them if they will.

But they say, that General Hancock, who is better than his party, has always been an excellent friend of the country and its prosperity and faith. Well, now, when a man is a candidate for the Presidency and writes letters, everybody knows they come substantially from the bottom of his heart. That is settled. If there is anything that the country can rely upon as true in purpose and in fact, it is in a candidate's letters. That we have always known. But, nevertheless, letters are not exactly transactions. When Admiral Coffin, who lived in Cape Cod as a child, had adhered to the British Crown, and risen to a great rank in the navy, came over to visit this country about fifty years ago, and renew his associations with his people and the familiar scenes of his boyhood, he told his officers that



when they got to Cape Cod they would see lobsters that would make them open their eyes—that they would see lobsters that would weigh twenty-five pounds. The rules of the quarter-deck do not permit you to contradict an Admiral flatly, but still some distrust was shown on the faces of those Lieutenants and Captains. “Well,” he says, “if you doubt it, I will make you a bet that when we get to Cape Cod I will show you lobsters that weigh twenty-five pounds.” And the bet was made, under this permission of the Admiral. And when they got there the Admiral scoured the Cape, but he did not find any lobsters that weighed twenty-five pounds. So he said, “Well, they don’t happen to be here just now, but I will get the affidavits of the old fishermen,” and he brought piles of affidavits, that when they were fishermen in early times, lobsters that weighed twenty-five pounds were as common as huckleberries are on the Cape. Then it was left to an umpire to decide which had lost or won the bet. And this concise judgment was given by the umpire, which would entitle him to a seat on the Supreme Court of the United States if everything in his life comported with it. His decision was that “Affidavits are not lobsters.” Now if any one doubted that, they could try to eat an affidavit from any source whatever. People are said sometimes to swallow their oaths, and these written depositions are not very savory food.

Now, candidates’ letters are not the decrees of a Democratic caucus, much less the acts of Congress of the United States. If anybody thinks they are, and elects General Hancock in that view, he will have to come back to that sober, commonplace judgment, that candidates’ letters are not acts of Congress. Now, General Hancock prides himself, and justly, upon having been a consistent and a genuine and earnest Democrat all his life. He was so in 1864. I have never heard that he “kicked,” as the phrase was, against the platform at Chicago of the Democratic party.

I never heard that he did, and I do not now find that it was made a matter of boast then.

Now, let us look at this party of ours, that has a candidate no better than itself, and the Democratic party, with their candidate that upheld its platform then, and let us see how they compare. It is short reading. The Republicans say in 1864: "We approve the determination of the Government not to compromise with the rebels or to offer them any terms of peace except such as may be based upon an unconditional surrender of their hostility, and a return to their just allegiance to the Constitution and laws of the United States, and we call on the Government to maintain this position, and to prosecute the war with the utmost possible vigor to complete the suppression of the rebellion, in full reliance upon the self-sacrificing patriotism, the heroic valor, and the undying devotion of the American people to the country and its free institutions." I would like to see the Republican now that will not follow his party in that sublime faith through the next election in November.

What did the Democratic party say at that very time on this very point? "That this convention does explicitly declare as the sense of the American people, that after four years of failure to restore the Union by the experiment of war, justice, humanity, liberty, and the public welfare demand that immediate efforts be made for a cessation of hostilities, with a view to an ultimate convention of the States or other peaceable means, to the end that at the earliest practicable moment peace may be restored on the federal union of the States." Which was right—the arrogant assumption of the Democrats to speak the deliberate sense of the American people, or the humble faith, in the dark hour and in the shadow of the valley, of the Republican party, that they could rely on the patriotism, the courage, and the undying devotion of the American people to their country and its free institutions? Now, I think I

would rather have a candidate who is not better than that Republican party than a candidate who is a good deal better than that Democratic party.

But in 1868 General Hancock was actively enlisted in the maintenance of the principles then avowed by the Democratic party. He was a candidate before the convention, and received, I think, 144 votes—I will not deprive him of anything—I think  $144\frac{1}{2}$  votes. So, there he is, with his colors nailed to the flag-staff. Now, nothing remained but this war. They had found out that the American people were attached to their institutions. But there we were, with this load of debt, with this embarrassment in the burden of taxation, with a people still tugging and sweating under the burdens that the Democratic party had laid on it. And now, they say, is a time to catch these people in despair. There are no trumpets now, there are no drums, there are no cannon—none of the pomp and circumstance of war to arouse and inflame them. It is the painful, slow drudgery of labor to pay taxes, and of capital to pay tribute to the government.

Now, we will see how the two parties stand, and how the party that Garfield represents stands by the side of, and in comparison with, the Democratic party. I will read of the Democratic party first: “1868: The bonded debt shall be paid in greenbacks. Government bonds and all other securities to be taxed equally with all other property.” There is the faith of the nation sacrificed at once. It then arraigns the Republican party “for the unparalleled oppression and tyranny that have marked its career.” Now, this is the smooth-spoken General Hancock, who thinks that the Republican party will not make much of a change if it falls into line behind him. This is the party—our party—that he speaks of as displaying the “unparalleled oppression and tyranny” that have marked our career—your career and my career! Let us vote for Hancock! Again, it announces

“that should the Republican party succeed in November next, and inaugurate its President, we will meet as a subjugated and conquered people, amid the ruins of liberty and the fragments of the Constitution!” Well, I would be very glad to meet General Hancock, as I often have done, almost anywhere. But amid the ruins of liberty and the fragments of the Constitution I would say that I would not recognize him at all. Then they “regard the reconstruction acts of Congress as usurpations” and “as unconstitutional, revolutionary and void,” and yet we are told everything is going on “smoothly”—“in a groove”—in a Republican groove, with only a change of cars and of brakemen, and of engineers, and of conductors, and of Superintendent. The whole fabric—that splendid fabric—of energy, of courage, of faith, by which the wisdom of the Republicans has drawn the nation out of the horrid, out of the ruinous contacts and destruction of war, and set it on the plane of comparative peace and on the plane of law—all that “usurpation,” “unconstitutional, revolutionary, and void!”

What did we say when we were struggling to pay this debt? I think it must be admitted that the North was to pay, and is to pay, more of that debt than the South. We did not try to “scale it”; we did not try to tax it. What did we do? We speak our mind fairly well. Our platform denounced all forms of repudiation as a national crime. There is no uncertain sound in that, is there? We did not stop to see whether we could commit a crime and escape punishment in this world, or at the hands of Providence. It was enough for us to know that it was a crime. “And the national honor requires the paying of the public debt in the uttermost good faith to all creditors at home and abroad,” not only according to the letter, but the spirit of the law under which it was contracted. “The letter killeth, but the spirit giveth life.” And if there was any doubt in the minds of our creditors, whether they were the poor widows and orphans in our

land, or the Rothschilds and rich bankers of London, that we would pay a debt that was so sacredly contracted to save all that is worth having in this world, according to the spirit as well as the letter, such a declaration would set them at rest.

Now, let us see the wisdom of the other side. They said, "pay your debt in greenbacks; tax your Government securities." We said that the best policy, by which to diminish our burden of debt, is so to improve our credit that capitalists will seek to loan us money at lower rates of interest than we now pay, and must continue to pay so long as repudiation, partial or total, open or covert, is threatened or suspected. Now, there are two ways of getting rid of debt. Which is the true mother of this child of the nation—the public credit—that boldfaced jade, the Democratic party, that would have cut it in half and left it to perish, or that nursing mother, the Republican party, that sought to shelter and cherish its weakness until it should outgrow it, and become, as it is to-day, the glory and the strength of the American people? I am happy to say Mr. Chairman, that those sentiments of the Republican party were uttered when you were at the head of the finances of the nation.

I am not going to read the later platforms, for they are fresh in your minds. In 1876 they said that the resumption of specie payments was impossible, and would ruin us. Well, as the client said to the lawyer, when he asked him if the magistrate could put him in prison for such and such and such cause. "No," said the lawyer, "he cannot." "But," said the client, "he has; I am in prison." We did resume specie payments; did it ruin us? Well, gentlemen, Napoleon used to say that, in the affairs of war, he had noticed that Providence favored the heaviest battalion, and I think that, in the affairs of peace, Providence favors courage, fidelity and faith in the moral government of the world.



There are two things that underlie the whole fabric of political society, its interest and its sentiment. One is the suffrage, which is the basis of it all. Another is the largeness and integrity of our country, which this people, for some reason or other, in spite of all the inculcation of Southern dogmas, are insisting upon thinking greater than any of its parts.

Our people know what the elements and traits of free suffrage are, and have resented any attack upon it in any form. What is the education of this people if it be not to value the liberties of others as well as their own? I never knew a king, or a noble, or priest, or rich man that did not value his liberty, and I think some of them were willing even to carry their liberties to the extent of license, as we say. But the question is, whether the strong value the liberties of the weak. The question is, whether the proud value the liberties of the humble. The question is, whether the man of great intellect, of great learning, values the liberties of the ignorant. And when a great section of this country talks about suffrage as an inviolable right, and then, with all its strength, all its pride, all its learning, flaunts itself before this country, boastful that it can intimidate the weak and can deceive the ignorant, I don't think much of their love of liberty, except in the sense that kings and nobles love liberty—for its license—at the expense of the poor, the humble, the ignorant and the weak. That is an old stage of politics in this world, but since the Fourth day of July, 1776, it has not been the politics of the American people, and I don't think it will be next November.

Let us see how much the platforms preach, and at the hustings, the orators palaver about the suffrage. The platform of the Democratic party speaks of it as the right preservative of all rights, and immediately proceeds to take it away from the blacks. Now, if that right is preservative of all rights, and you take it away from the blacks, cunning as

you are, you take away their rights. Now, General Hancock says, in the admirable letter of acceptance, of which his party is so proud, that a free ballot, a full vote, and an honest count is what the people of the United States want. Now, here is a little table that has been used by an accomplished orator throughout the western part of this country, in which he gives the following result of a free ballot, a full vote, and a fair count in 1876:

	Hayes	Tilden
Green County, Ala.....	2	408
Walton County, Ga.....	2	1,393
Wilkes County, Ga.....	2	1,139
East Feliciana, La.....	none	1,736
Lawrence County, Miss.....	2	2,073
Tallahatchie County, Miss.....	1	1,144
Yazoo County, Miss.....	2	3,672
Brown County, Texas.....	1	2,525
Eastland County, Texas.....	3	1,787
Hidalgo County, Texas.....	4	1,629
Buchanan County, Va.....	2	1,330

Now, you see what the Democratic protection of the right of suffrage, preservative of all rights, and a free ballot, a full vote, and a fair count is. Here are eleven counties in six different Southern States that have produced in the aggregate twenty-one votes for Hayes and sixteen odd thousand for Tilden. Now, I think that, under a candidate that is better than his party, and with this preaching in the platform, and this palaver at the hustings, the Republican vote in these counties will probably be doubled from twenty-one to forty-two. But as the Democrats like to be included in all this talk about a free ballot, a full vote, and a fair count, I suppose their aggregate will rise from sixteen thousand to thirty-two thousand.

Well, gentlemen, I don't know what the American people are made of. I don't know whether they like this palaver.

I don't think it is creditable to a candidate, that is better than his party, to write such contemptuous imitation of such principles as that. I don't think it is creditable to a party, even though it is worse than a candidate, to put forth such a solemn proposition of its love of that suffrage, "preservative of all rights." The only equal for this disparity between principles and practice that I have ever heard of, was that of a man who broke his wife's head with a motto that hung in a frame at their bedside, "God bless our home."

Now, as I say, loving the suffrage, we resent any interference with it. Now, this Democratic party says to us, "Oh, don't mind them—the negroes of the South: they are far off; they are not of your race; they are ignorant; they are feeble. Don't distress yourselves about this injury of the poor blacks in the distant parts of the country; that is our State right, and we mean to exercise it." But when the American liberty accuses the Democratic party of having made a deadly assault upon the first foundation right of liberty and equality, the Democratic party undertakes to reply: "When have we made such an assault? Why, we have prophesied under the name of liberty, and under the name of liberty we have cast out Republican devils." The answer is, "Inasmuch as ye have done it to the least of these poor disciples of liberty at its feet, ye have done it unto me" and in the scales of justice, and in the eye and in the balance of the Divine scrutiny this is a law of the moral government of the world, and if this people looks with patience on this robbery of the suffrage from these poor freedmen, it won't be long before we shall have to debate what we shall do to protect the suffrage of these poor plebeians whom Tarquin the Superb would rob of their franchises.

(NOTE: We omit the remainder of this speech as reported. It is too fragmentary and disjointed. Mr. Evarts continues in much the same vein to deal with the questions, as between the two great

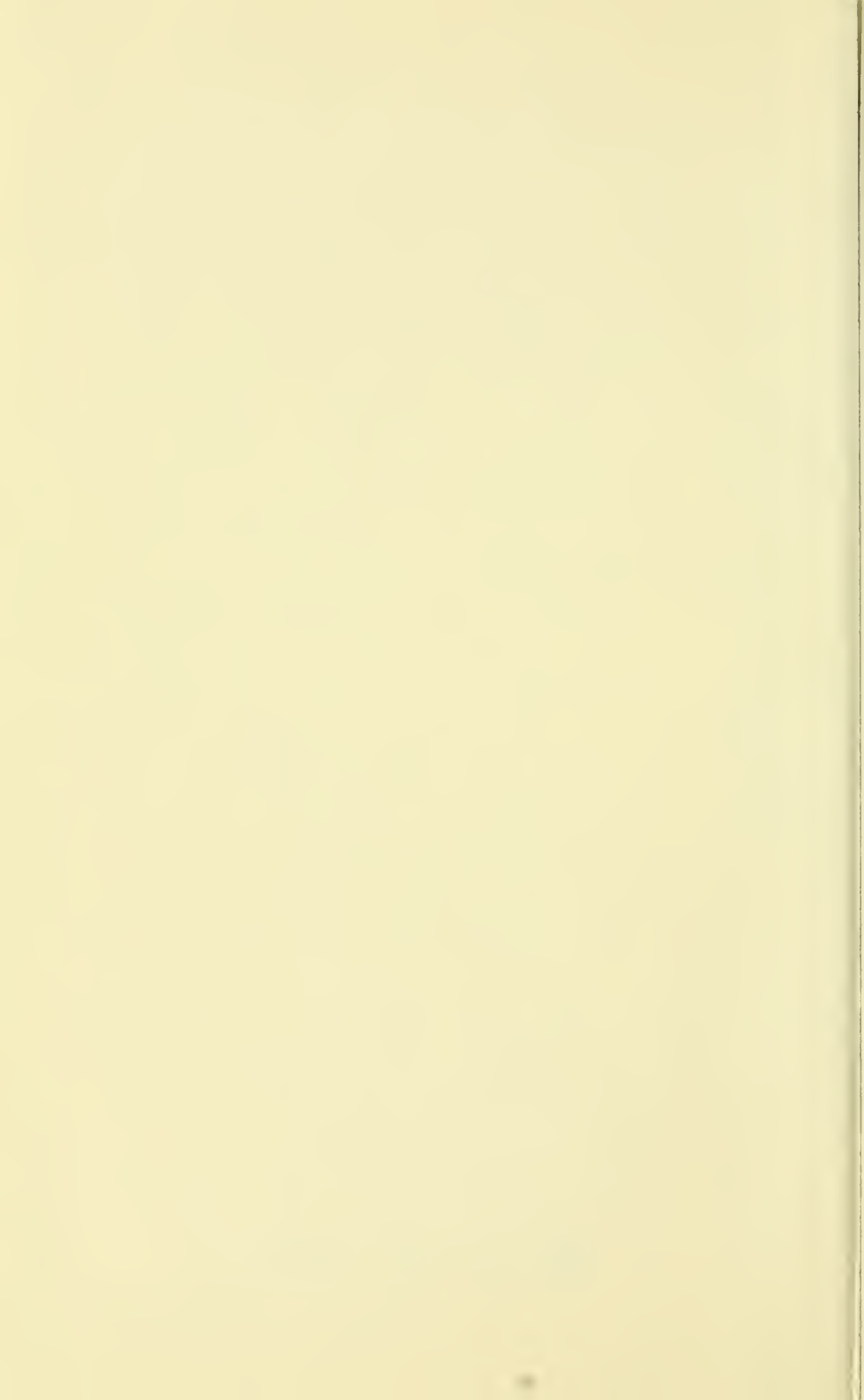
political parties, that were uppermost in the public discussions of the day. Maintaining that the Democratic party was fundamentally the same then, in its purposes and its theories of government, as it was before and during the civil war, he continued in his solemn warnings against letting that party into control of the government again. There is a brief defence of the Republican doctrine of a protective tariff, dwelling upon the argument that one of the purposes and results of the Republican tariff was the protection and maintenance of the American laborer against conditions that would bring American labor down to the level of that of Europe; and that this tariff, in its encouragement of manufactures, would enure to the benefit of the South, if the South would but take advantage of it, in the establishment there of great industrial enterprises. He closes, reproaching the Democratic party for its sectionalism in the "Solid South," and claiming for the Republican party, upon its past great record and its then recent history, the support of the voters to continue it in power as the safeguard of the welfare of the country.)

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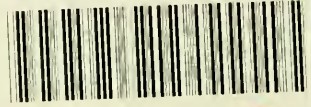
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